

# Exhibit 9

Dr. Douglas Chrissan – December 18, 2023

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THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

HEADWATER RESEARCH, LLC,  
Plaintiff,  
vs.  
SAMSUNG ELECTRONIC CO., LTD  
AND SAMSUNG ELECTRONICS  
AMERICA, INC.,  
Defendants.

Case No.  
2:22-CV-00422-RG-RSP

VIDEO RECORDED DEPOSITION UNDER ORAL EXAMINATION OF  
DR. DOUGLAS CHRISSAN  
DATE: December 18, 2023

REPORTED BY: MICHAEL FRIEDMAN, CCR

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TRANSCRIPT of the deposition of the  
DR. DOUGLAS CHRISSAN, called for Oral Examination in the  
above-captioned matter, said deposition being taken  
by and before MICHAEL FRIEDMAN, a Notary Public and  
Certified Court Reporter of the State of New Jersey,  
located at ZOOM VTC, all parties remote, on December  
18, 2023, commencing at approximately 8:04 in the  
morning, Pacific Standard Time.

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1       A P P E A R A N C E S:

2

3       RUSS, AUGUST & KABAT  
4       12424 Wilshire Blvd.  
5       Los Angeles, CA 90025  
6       BY: KRISTOPHER R. DAVIS, ESQ.  
7       Attorneys for Plaintiff

8

9

10       FISH & RICHARDSON  
11       1000 Maine Avenue, SW  
12       Washington, DC 20024  
13       BY: BENJAMIN THOMPSON, ESQ.  
14       THAD KODISH, ESQ.  
15       Attorneys for Defendants

16

17       ALSO PRESENT: GUS PHILLIPS, Videographer

18

19                               \* \* \* \* \*

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I N D E X

WITNESS NAME	PAGE
DR. DOUGLAS CHRISSAN	
By Mr. Thompson	8, 133
By Mr. Davis	130

\* \* \* \* \*

E X H I B I T S

EXHIBIT NO.		PAGE
EXHIBIT 1	231128 Chrissan Decl ISO Headwater's Markman Briefing (EDTX-422)	11
EXHIBIT 2	US9143976_HW_00004783	110
EXHIBIT 3	US9277433_HW_00005741	116
EXHIBIT 4	US9277445_HW_00002011	126

\* \* \* \* \*



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1 THE COURT REPORTER: My name is  
2 Michael Friedman, a Certified Shorthand  
3 Reporter. This deposition is being held  
4 via videoconferencing equipment.

5 The witness and reporter are not in  
6 the same room. The witness will be sworn  
7 in remotely, pursuant to agreement of  
8 all parties. The parties stipulate that  
9 the testimony is being given as if the  
10 witness was sworn in person.

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1 THE VIDEOGRAPHER: We are now on  
2 the record for the video deposition of  
3 Dr. Doug Chrissan.

4 The time is 8:04 a.m. December 18,  
5 2023 in the matter of Headwater Research  
6 LLC versus Samsung electronics Co.,  
7 Limited, et al, case number  
8 2:22-CV-00422RG, being held in the  
9 United States District Court for the  
10 Eastern District of Texas. Marshall  
11 Division.

12 The court reporter is Michael  
13 Friedman. The videographer is Gus  
14 Phillips. Both are representatives of  
15 Gregory Edwards LLC.

16 (Whereupon a discussion was held  
17 off the record.)

18 THE VIDEOGRAPHER: All appearances  
19 will be stated on the stenographic  
20 record.

21 Will the court reporter please  
22 administer the oath.

23  
24  
25



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1 D R. D O U G C H R I S S A N,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:  
4

5 EXAMINATION BY MR. THOMPSON:

6 Q Good morning, Dr. Chrissan.

7 A Good morning.

8 Q My name is Ben Thompson, and I'm  
9 with the firm of Fish & Richardson, who  
10 represents Samsung in this matter.

11 I will be asking you a number of  
12 questions today, starting by asking you to  
13 state your full name for the record, please.

14 A My name is Douglas A. Chrissan.

15 Q And, Dr. Chrissan, I take it from  
16 reviewing your CV it's likely that you've  
17 been deposed before.

18 Is that correct?

19 A Yes, I have.

20 Q Do you have a ballpark of about how  
21 many times you've been deposed?

22 A About 20.

23 Q Okay. Did any of your previous  
24 depositions relate to the patents in this  
25 case as far as you're aware?

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1           A     No, they did not.

2           Q     Okay. Have any of your previous  
3     depositions had any relationship to Samsung?

4           A     No, they did not.

5           Q     Okay. And did any of your previous  
6     depositions relate to the plaintiff,  
7     Headwater?

8           A     No, they did not.

9           Q     Okay. You probably heard these  
10    ground rules before, but I will go over them  
11    anyway so we're on the same page.

12                     Starting with you understand that  
13    you're testifying under oath today?

14           A     Yes, I do.

15           Q     And can you think of any reason why  
16    you would be unable to testify truthfully and  
17    accurately today?

18           A     No.

19           Q     I'm going to ask you a good number  
20    of questions today, and if at any point in  
21    time you don't understand my question, will  
22    you please let me know?

23           A     Yes, I will do that.

24           Q     And if you answer a question that  
25    I've asked, I'm going to assume that you

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1 understood the question as I asked it.

2 Is that fair?

3 A Yes, that's fair.

4 Q I'm going to try to take a break  
5 about every hour during this deposition, but  
6 I'll confess to you sometimes I'm not very  
7 good at that, so if at any time you'd like to  
8 take a break, please let me know.

9 I will just ask that you answer any  
10 questions pending prior to taking that break  
11 unless the break concerns any sort of  
12 privileged discussions or questions about  
13 privilege that you might want to discuss with  
14 your counsel.

15 Does that all make sense?

16 A Yes, I understand.

17 Q Okay. You submitted a declaration  
18 in this case in support of the plaintiffs'  
19 claim construction positions.

20 Is that correct?

21 A Yes, I did.

22 Q Do you have a copy of that  
23 declaration with you to aid in your testimony  
24 today?

25 A I do not. I was not told to have

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1       one. I figured you could drop me one.

2           Q     I plan to do that. Just wanted to  
3       check.

4           MR. THOMPSON: So I'm going to drop  
5       into the chat right now what will be  
6       Exhibit 1.

7           (Whereupon the above mentioned was  
8       marked for identification.)

9           Q     This is the expert declaration of  
10       Douglas A Chrissan, Ph.D., and please let me  
11       know if you're able to download and access  
12       that.

13          A     I have it. I am viewing it.

14          Q     Okay. And do you recognize  
15       Exhibit 1?

16          A     (Witness reviewing.)

17                You mean the file -- Exhibit 1 of  
18       this deposition, the file you just  
19       downloaded -- the file you just gave me?

20          Q     Yes.

21          A     Yes, that's my declaration. I'll  
22       scan through it, but I'm sure you -- I trust  
23       that you gave me my own declaration back  
24       correctly.

25          Q     If at any point in time today you

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1 recognize something missing from that  
2 declaration, please let me know.

3 I'll represent that it was my  
4 intent to provide to you as Exhibit 1 the  
5 precise declaration that we received from  
6 counsel.

7 A Yes, this looks accurate.

8 Q Okay. If you turn with me to  
9 section 7 of your declaration, which begins  
10 on the bottom of page 5. Let me know when  
11 you're there.

12 A Okay. I'm there.

13 Q Does section 7 contain your  
14 opinions specific to the term that is in  
15 dispute?

16 A Yes, it does. I would say terms  
17 that are in dispute, but those terms are  
18 similar and addressed as one, and as I have  
19 mentioned in one of the paragraphs of this  
20 declaration.

21 Q Okay. What's your understanding as  
22 to what are the disputed terms?

23 A (Witness reviewing.)

24 Well, okay. So it's listed right  
25 there under section 7A:

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1                   "A representation of the disputed  
2           term is that the user of the device...  
3           perceiving any benefit from that  
4           application."

5                   If we want to be more specific, we  
6           can go down to claim 2 on native page 7. In  
7           bold it says, "The application is running in  
8           a background state when a user of the device  
9           is not directly interacting with that  
10          application or perceiving any benefit from  
11          that application."

12                  My understanding is that the  
13          dispute is primarily over the "perceiving any  
14          benefit from that application" phrase.

15                  Q     Okay. And if you will look with me  
16          at paragraph 25 of your declaration.

17                  A     Yes.

18                  Q     And the last sentence of that  
19          paragraph states, "My analysis herein recites  
20          the '701 patent but applies similarly to all  
21          of the challenged claims."

22                  Do you see that?

23                  A     Yes.

24                  Q     What did you mean by that  
25          statement?

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1           A     I meant exactly what's written in  
2     all of paragraph 25.

3                     I note -- I noted when I looked  
4     through all of the patents and their claims  
5     for the disputed terms, because I received  
6     information that -- from counsel about the  
7     specific patents and claims with the term in  
8     dispute, so I wanted to look at all of those  
9     claims and see if the wording was identical  
10    or a little bit different.

11                    And I did see that the wording is a  
12    little bit different in some of the claims  
13    and I note that here, although I don't note  
14    all of the differences.

15                    But what I identified was that the  
16    wording -- the disputed wording across the  
17    one, two, three, four, five, six, seven  
18    patents in dispute, I felt that the wording  
19    was comparable enough that the -- that one  
20    argument would be sufficient and one  
21    explanation and one opinion would be  
22    sufficient to address all of the  
23    variations in -- all of the minor variations  
24    in claim wording across those seven patents.  
25    That's what that meant.

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1           Q    Okay. Would you agree with me then  
2           that the analysis of the disputed terms in  
3           your declaration, it applies across all the  
4           claims that include this phrase?

5                   Is that a fair statement?

6           A    That's a fair statement with any  
7           minor adjustments that are needed to address  
8           minor wording changes, but in general, yes,  
9           that's the intent of this paragraph 25 is to  
10          state that my opinion in this declaration  
11          applies to all of the -- all seven of those  
12          patents.

13          Q    To be clear, your declaration, it  
14          doesn't provide an opinion that the  
15          disputed -- one of the disputed terms is any  
16          more or less clear than any of the other  
17          disputed terms.

18                   Is that correct?

19          A    Just so that I make sure I catch  
20          every word, please repeat your question.

21          Q    Sure, and I'll modify it slightly  
22          to potentially make it more clear what I'm  
23          going after.

24                   Is it true that in your declaration  
25          you don't have any opinion that one of the



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1       disputed terms is any more or less clear in  
2       scope as it appeared in one patent compared  
3       to a similar term from another patent?

4             A     That's correct.

5             Q     Do you understand that it's  
6       Samsung's position that the disputed terms  
7       render the challenged claims indefinite?

8             A     That's my understanding.

9             Q     And at least one of the reasons for  
10       Samsung's position is that the scope of the  
11       challenged claims is not reasonably clear to  
12       a person of skill in the art?

13             Is that your understanding of  
14       Samsung's position?

15             A     Generally, yes.

16             My understanding as well is that  
17       Samsung's position is that the claim terms  
18       would involve a subjective inquiry.

19             Q     Okay. Let's talk about that.

20             If you can turn with me to  
21       paragraph 23 of your declaration.

22             A     Yes.

23             Q     And I'm going to read to you a  
24       portion of that paragraph where it says, "My  
25       understanding is that Samsung believes that

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1       whether a person is perceiving any benefit  
2       from an application is a subjective inquiry  
3       and that the specification allegedly provides  
4       no objective boundaries to clarify the scope  
5       of the claimed invention. I disagree."

6               Do you see that?

7           A     Yes.

8           Q     So is it your opinion that the  
9       specification together with the claims of the  
10      relevant patents provides objective  
11      boundaries to clarify the scope of the  
12      disputed terms?

13          A     Yes, I do.

14          Q     I think we realized this before,  
15      but do you agree that the disputed  
16      limitations concern whether a user of the  
17      device is perceiving any benefit from an  
18      application?

19          A     Could you repeat the question?

20          Q     Sure.

21               Do you agree that the disputed  
22      limitations concern whether a user of a  
23      device is perceiving any benefit from an  
24      application?

25               MR. DAVIS: Object to form.

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1           A     That's one portion of the claim.

2                     With respect to the claim that I'm  
3     looking at in my declaration, the application  
4     is running in a background state when a user  
5     of the device is not directly interacting  
6     with that application or perceiving any  
7     benefit from that application.

8                     As a person of skill in the art at  
9     the time of the patent, I consider or view  
10    that entire folded — that entire bolded  
11    phrase, and it — that particular phrase  
12    states, "Not directly interacting or  
13    perceiving a benefit."

14                    So I will go back and ask you  
15    again: Can you ask your question again?

16                    This is — this is one of the cases  
17    that having the Realtime would help, but I'm  
18    happy to ask you to restate the question.

19            Q     Sure.

20                    My question was whether you agree  
21    the disputed limitation concerns whether a  
22    user is or is not perceiving any benefit from  
23    an application.

24            A     That is true, qualified by the  
25    statement that there is further context

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1 provided by additional claim language, as I  
2 explain in my deposition.

3 Q Yeah, and I don't disagree with you  
4 that -- I'm not trying to read the whole  
5 claim. I'm just trying to focus on the  
6 portion of the claim that is most relevant to  
7 our discussion, and that is the focus of your  
8 declaration.

9 Do you understand that?

10 A Yes.

11 Q Okay.

12 A And for that we can go back to the  
13 disputed -- the disputed term is a term  
14 disputed by counsel, and I believe you have  
15 stated the disputed term.

16 Q Okay. So do you believe that for a  
17 given device user and application a person of  
18 ordinary skill in the art would reasonably  
19 determine whether that particular device  
20 falls within the scope of the claims at  
21 issue?

22 A Your question conflates a number of  
23 things that in my opinion divert from the  
24 claim language.

25 Could you ask the question that's

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1 more directed to the claim language?

2 Q Would you agree that the -- say  
3 claim 2 of the '701 patent, for example -- do  
4 you have that in mind?

5 A I'm looking at it.

6 Q Okay. And claim 2 of the '701  
7 patent incorporates claim 1.

8 Correct?

9 A Yes.

10 Q Okay. And claim 1 recites a  
11 wireless end user device?

12 A Yes.

13 Q And claim 1 and claim 2 also  
14 reference a user?

15 A Yes.

16 Q And claim 2, for example,  
17 references an application?

18 A Yes.

19 Q So my question to you is given a  
20 particular device user and application, can a  
21 person of ordinary skill in the art  
22 reasonably determine whether that particular  
23 device falls within the scope of the  
24 claims -- claim 2, for example?

25 A So your question is about the

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1 device?

2 Q Yeah. That's the subject of  
3 claim 1 and claim 2.

4 A Let me go back and read claim 1.  
5 (Witness reviewing.)

6 MR. THOMPSON: I'll withdraw that  
7 question, and perhaps I can shortcut  
8 that for us.

9 Q If I were to describe for you a  
10 device and an application, are you able to  
11 tell me whether or not a user would be  
12 perceiving any benefit from that application?

13 A Well, I was taking the time to read  
14 claim 1 and 2, which I would want to do  
15 anyway, so let me finish.

16 (Witness reviewing.)

17 Okay. Could you ask your question  
18 again?

19 Q Sure.

20 If I were to describe for you an  
21 instance involving a user and an application  
22 in the context of the disputed claims, will  
23 you be able to tell me whether the user is  
24 perceiving any benefit from the application?

25 MR. DAVIS: Object to form.

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1           A     The answer is yes, with the  
2           qualification that I would need sufficient  
3           detail about all of those things, but if you  
4           provide me all of the sufficient detail that  
5           I need, I would be able to give you a clear  
6           answer.

7                     I would apply the principles in my  
8           declaration.

9           Q     Okay. If I can turn you to  
10          paragraph 26.

11          A     Yes.

12          Q     And you state about midway through  
13          this particular paragraph that, "The  
14          application is determined to be running in a  
15          background state when either of two  
16          conditions is met; number 1, when the user is  
17          not directly interacting with the  
18          application, or number 2, when the user is  
19          not perceiving any benefit from the  
20          application."

21                     Do you see that sentence?

22          A     Yes.

23                     (Whereupon a discussion was held  
24          off the record.)

25          Q     So under your interpretation, if

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1       either of the conditions you listed here is  
2       found to be true, the application is in a  
3       background state.

4               Correct?

5           A     Please repeat your question.

6           Q     Sure.

7               If either of the conditions I just  
8       read from your declaration is true, is it  
9       your opinion the application would be in a  
10      background state?

11          A     You're diverting from the claim.  
12      Let's read claim 2.

13               "The wireless end user device of  
14      claim 1 wherein the one or more processors  
15      are configured to determine that the first  
16      end user application is running in a  
17      background state when a user of the device is  
18      not directly interacting with that  
19      application or perceiving any benefit from  
20      that application."

21               If I'm a person of skill at the  
22      time of the patent that reads this patent and  
23      says, "I want to implement this invention,"  
24      then what that means is that when I write my  
25      software for the one or two processors, it's



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1       going to be -- I'm going to configure it to  
2       determine that the application is running in  
3       a background state when A or B.

4               And then further explanation of how  
5       and why we do that is contained throughout my  
6       declaration.

7               Q     Right. So if the processor  
8       determines that either A or B is true, then  
9       the application will be determined to be  
10      running in a background state.

11              Correct?

12              A     More or less. You twisted up a  
13      couple of the words of the claim, but  
14      generally, yes.

15              The processor makes a  
16      determination, and this claim describes how  
17      that processor makes that determination.

18              Q     In paragraph 27 you state that,  
19      "The surrounding claim language makes clear  
20      that the question of whether a user is  
21      perceiving a benefit from the application is  
22      not a subjective inquiry."

23              Do you see that?

24              A     (Witness reviewing.)

25              Yes, I do.

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1           Q     What did you mean by the word  
2     "subjective" in this context?

3           A     (Witness reviewing.)

4                     I can -- well, the term,  
5     "subjective query" was provided to me as a  
6     legal term.

7                     My understanding of subjective is  
8     subject to some -- one possible  
9     interpretation is subject to some uncertainty  
10    or subject to perceiving different answers if  
11    asked from different sources.

12          Q     The word "subjective" can mean  
13    based on personal opinions as opposed to  
14    facts.

15                    Is that consistent with the  
16    understanding you applied as part of your  
17    analysis?

18          A     Could you repeat your question and  
19    that phrase?

20          Q     Sure.

21                    The word "subjective" can mean  
22    based on personal opinion as opposed to fact.

23                    Is that consistent with the  
24    understanding of the word "subjective" you  
25    applied as part of your analysis?

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1           A     Generally, yes. Certainly the  
2           personal opinion part, and I think sometimes  
3           personal opinions can be derived from facts,  
4           but that's a hypothetical thing. That's not  
5           at issue here.

6                     Just subjective can mean subject to  
7           personal opinion.

8           Q     Was it your opinion that where the  
9           disputed claims state that a user of the  
10          device is or is not perceiving any benefit  
11          from an application, that is not subject to  
12          personal opinion.

13                     Is that fair?

14          A     Please restate your question.

15          Q     Sure.

16                     Is it your opinion that where the  
17          disputed claims state that a user of the  
18          device is or is not perceiving any benefit  
19          from an application, that's not subject to a  
20          personal opinion?

21          A     That's correct, especially in the  
22          context of these claims related to a  
23          processor that's making a determination, and  
24          that's explained clearly in this declaration  
25          as well starting at paragraph 27.

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1           Q     In the context of the disputed  
2     claims, are there any instances when one user  
3     might perceive a benefit from an application  
4     and another user would not perceive a benefit  
5     from that same application?

6           MR. DAVIS: Object to form.

7           A     That is outside of the -- how a  
8     person of skill interprets the claim  
9     language, which is paragraph 27. I'll read  
10    it for the record.

11           "This surrounding claim language  
12    makes clear that the question of whether a  
13    user is perceiving a benefit from the  
14    application is not a subjective inquiry.

15           "The challenge claim recites that  
16    one or more processors determine whether an  
17    application is running in a background state  
18    or is a foreground application.

19           "This determination considers  
20    whether a user is or is not perceiving a  
21    benefit from the application which a POSITA  
22    would understand to be indicated by whether  
23    the device is or is not performing operations  
24    that are noticeable to the user.

25           "Any information from an

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1 application that is noticeable to a user is  
2 expected to be perceived by the user and to  
3 be beneficial to the user or else the  
4 application would not waste resources  
5 presenting it; i.e., making it noticeable."

6 I think another point to add is  
7 that a person of skill reading this claim  
8 understands that a processor is making a  
9 determination. The processor is not required  
10 to read the user's mind.

11 Q Okay. So your declaration is  
12 submitted as an exhibit, and I appreciate  
13 that there are other portions of your  
14 declaration, but I'm -- I want to focus you  
15 more on my question.

16 I'm not sure I got an answer to the  
17 question. Maybe I did, but let me ask it  
18 again and see if we can find some common  
19 ground here.

20 In the context of the disputed  
21 claims, are there any instances when one user  
22 might perceive a benefit from an application  
23 while another user would not perceive a  
24 benefit from that same application?

25 A Could you repeat your question?

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1 Q Sure.

2 In the context of the disputed  
3 claims, are there instances when one user  
4 might perceive a benefit from an application  
5 and another user would not perceive a benefit  
6 from that same application?

7 A Not in the context of the claims.

8 The claims, as I state, presume  
9 that if the application and the device are  
10 performing an operation that is noticeable to  
11 the user, then the user is capable of sensing  
12 that as a benefit of the application.

13 Q Are you familiar with the concept  
14 of a term of degree as it relates to patent  
15 claims?

16 A I have encountered that phrase  
17 before.

18 Q You don't have any opinion in this  
19 particular case that the disputed term  
20 involves a term of degree.

21 Is that correct?

22 A Could you ask that question again?

23 Q Sure.

24 Do you have any opinions as to  
25 whether the disputed term involves a term of

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1 degree?

2 A I don't think it involves a term of  
3 degree.

4 Q Okay. I think I understood you  
5 previously to testify that according to the  
6 disputed claims, it's the device processor  
7 that would determine whether a user perceives  
8 a benefit from an application.

9 Is that correct?

10 A Could you repeat your question?

11 Q Sure.

12 I think I understood you previously  
13 to testify that according to the disputed  
14 claims, it's the device processor that would  
15 determine whether a user perceives a benefit  
16 from an application.

17 Is that correct?

18 A Yes, that's essentially the claim  
19 language.

20 Q So I'm going to refocus our  
21 attention on a portion of paragraph 27 that I  
22 believe you just recently read that states,  
23 "Whether a user is or is not perceiving a  
24 benefit from the application" -- and I'm fast  
25 forwarding a bit here -- "is indicated by

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1       whether the device is or is not performing  
2       operations that are noticeable to a user."

3               Is it your understanding that what  
4       the claim means when it discusses determining  
5       whether a user is perceiving a benefit from  
6       an application, that means whether or not the  
7       device is performing operations that are  
8       noticeable to the user?

9               A     Yes. That is how a person of skill  
10       would have interpreted it at the time of the  
11       invention, and that's how I would have  
12       interpreted it at the time of the invention,  
13       and that's how I interpret it now.

14              Again, this claim is not about the  
15       processor being required to read the user's  
16       mind.

17              Q     The interpretation I just  
18       questioned you about, that's the  
19       interpretation that you applied across all of  
20       the disputed claims?

21              A     With minor adjustments for minor  
22       variations in claim language, yes.

23              And is that interpretation a binary  
24       determination, meaning if the application and  
25       operation is noticeable to the user, the user



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1 is perceiving a benefit, whereas if the  
2 application operation is not noticeable to  
3 the user, the user is not perceiving a  
4 benefit.

5 Please restate your question.

6 Q Sure.

7 I'm trying to determine whether or  
8 not your interpretation of this disputed  
9 phrase, "implies a binary determination," and  
10 meaning that if the application operation is  
11 noticeable to the user, that would be the  
12 user is perceiving a benefit from that  
13 application.

14 On the flip side, if the  
15 application operation is not noticeable to  
16 the user, that would mean the user is not  
17 perceiving a benefit from that application.

18 Is that your understanding?

19 A Within the scope of this claim,  
20 what it means is that the processor would  
21 determine that the application is running in  
22 a background state when the user is not  
23 directly interacting with that application,  
24 and the user is not -- yeah, and the  
25 application is not performing an operation

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1       that the noticeable to the user.

2               So if the application -- what that  
3       means is that if the user is not directly  
4       interacting with the application and the  
5       application is not performing an operation  
6       that is noticeable to the user, then yes,  
7       that's -- that's the background state.

8           Q     Okay.

9           A     Or no, that's not the background  
10       state.    Sorry.

11          Q     Yeah, I understood.

12               So let me just try and refocus our  
13       attention to just the perceiving a benefit  
14       portion.

15               Is it the case that if an  
16       application is not performing an operation  
17       that is noticeable to the user, the user is  
18       not perceiving any benefit from that  
19       application?

20          A     Within the -- within the language  
21       of this particular claim and the processor's  
22       determination, yes, I believe that's correct.

23          Q     Okay. And on the converse of that  
24       would be in the context of these claims, if  
25       an application is performing an operation

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1       that is noticeable to the user, the user  
2       would be perceiving a benefit from that  
3       application.

4                   Correct?

5           A     Could you state your question  
6       again?

7           Q     Yeah.

8                   I'm intending to just take the flip  
9       side of what I just stated and we agreed to,  
10      but if I'm not saying it correctly, let me  
11      know.

12                   And my question is in the context  
13      of the disputed claims if an application is  
14      performing an operation that is noticeable to  
15      the user, the user will be perceiving a  
16      benefit from that application.

17                   Is that correct?

18          A     Yes.

19          Q     Okay. And remaining in  
20      paragraph 27, you state that -- I'm reading  
21      the last sentence -- "Any information from an  
22      application that is noticeable to a user is  
23      expected to be perceived by the user and to  
24      be beneficial to the user," and your sentence  
25      goes on.

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1 Do you see that sentence?

2 A (Witness reviewing.)

3 Yes, I see it.

4 Q And I assume we can agree that none  
5 of the disputed claims recite the phrase,  
6 "Expected to be perceived by the user."

7 Can we agree on that?

8 A The claims do not state that  
9 explicitly.

10 Q According to your interpretation of  
11 the disputed terms, there's an expectation  
12 that every operation that an application  
13 performs and a user notices would be  
14 perceived as beneficial.

15 Correct?

16 MR. DAVIS: Object to form.

17 A Could you state your question  
18 again?

19 Q Sure.

20 According to your interpretation of  
21 the disputed terms, there's an expectation  
22 that every operation that an application  
23 performs and a user notices would be  
24 perceived as beneficial.

25 Correct?

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1 MR. DAVIS: Same objection.

2 A Your wording is a little different  
3 than the claim.

4 Perceiving -- perceiving any  
5 benefit of the application, the wording of  
6 the claim is, "Perceiving any benefit," which  
7 I and a person of skill would interpret it as  
8 perceiving any benefit of the application.

9 This claim, you know, the claim  
10 language is not -- the claim language doesn't  
11 say perceiving a great benefit or puts -- the  
12 claim doesn't put some degree on it. It  
13 says, "Perceiving any benefits." It's  
14 binary, zero or some benefit, small or large,  
15 so a person of skill interprets benefit as  
16 benefit of the application, "Perceiving any  
17 benefit of the application."

18 This claim is not about whether the  
19 user thinks the benefit is trivial or life  
20 changing. The claim is simply about whether  
21 the processor and the application are  
22 performing an operation that's noticeable to  
23 the user.

24 Q Okay. I didn't use the word  
25 "great" anywhere in my question, so I'm not

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1       sure why that was incorporated into your  
2       answer.

3               So I'll reask my question again,  
4       which is: According to your interpretation  
5       of the disputed terms, is there an  
6       expectation that every operation that an  
7       application performs and a user notices would  
8       be perceived as a benefit of that  
9       application?

10              MR. DAVIS: Same objection.

11              A     Yeah. Your question changed,  
12       because I know in the first incarnation you  
13       used the word "beneficial." So could you  
14       restate your question, the exact question you  
15       just asked?

16              Q     I will. I was trying to  
17       incorporate from your language so that we  
18       could reach a common ground and address some  
19       of the distinctions I heard you'd be making,  
20       so I'll reask the question that I just asked.

21              According to your interpretation of  
22       the disputed terms, is there an expectation  
23       that every operation that an application  
24       performs and a user notices would be  
25       perceived as a benefit of that application?

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1 MR. DAVIS: Objection to form.

2 A Please give me your question one  
3 more time.

4 Q Sure.

5 According to your interpretation of  
6 the disputed terms, is there an expectation  
7 that every operation that an application  
8 performs and a user notices would be  
9 perceived as a benefit of that application?

10 MR. DAVIS: Same objection.

11 A I will answer your question, but  
12 before that I want to put into the record the  
13 dictionary definitions of perceive as stated  
14 in my declaration, which would be to become  
15 aware of directly by the senses, especially  
16 to see or hear.

17 So that is my understanding of the  
18 word "perceived," and I believe that the  
19 answer to your question is yes, but give me  
20 your question one last time.

21 Q Sure.

22 According to your interpretation of  
23 the disputed terms, is there an expectation  
24 that every operation that an application  
25 performs and a user notices would be

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1       perceived as a benefit of that application?

2           A     At least within the scope of this  
3       claim at the time the processor is  
4       determining, then yes, I believe the answer  
5       is yes.

6                   I state that in my paragraph 27,  
7       "Any information from an application that is  
8       noticeable to a user is expected to be  
9       perceived by the user, i.e., seen, heard or  
10      felt, and to be beneficial to the user or  
11      else the application would not waste  
12      resources presenting it."

13                  Yeah, that's in my declaration. I  
14      stand behind it. I think that's what your  
15      question was about.

16           Q     In your experience with mobile  
17      device applications, did the applications  
18      ever provide information that a user notices  
19      but would not believe to be beneficial?

20           A     Well, benefit -- okay. So claim 2  
21      uses the word "benefit." A person of skill  
22      interprets that as a benefit of the  
23      application.

24                  So in that context, what is your  
25      question again?



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1 Q Sure.

2 I'm asking in the context of mobile  
3 devices. Do you have a mobile device, a  
4 mobile phone?

5 A Yes, I do.

6 Q Does your mobile device ever  
7 provide you with information within an  
8 application that doesn't provide any benefit  
9 to you?

10 A I consider anything an application  
11 does to be a benefit of that application.

12 Again, the claim is not about what  
13 any -- you know, the value that any given  
14 user may subjectively give to a benefit. The  
15 claim is simply: Does the device perform an  
16 operation that's noticeable and that is  
17 considered a benefit of the application?

18 Q Can you think of any examples where  
19 a mobile application provides noticeable  
20 information that the user might not care  
21 about?

22 A That's a hypothetical. I haven't  
23 thought about it or don't have an opinion.

24 Do you have a specific case, case  
25 study?

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1           Q     I was just wondering, sitting here  
2     right now, can you think of any instances  
3     where a mobile application would provide  
4     noticeable information that a particular user  
5     wouldn't have any interest in?

6           A     Not as I sit here today.

7                     Again, that's a subjective and --  
8     that's, you know, that's -- that would depend  
9     on the user.

10          Q     Just sitting here today, you can't  
11     provide me any examples of an instance where  
12     a mobile application provides noticeable  
13     information to a user that a particular user  
14     would not have any interest in.

15                     Is that fair?

16          A     Yeah, as I sit here, I don't.  
17     Again, that's outside of the scope of the  
18     claim.

19          Q     I will turn your attention to  
20     paragraph 29. Just let me know when you're  
21     there.

22          A     Okay. I'm there.

23          Q     Okay. At the start of this  
24     paragraph you start by discussing information  
25     displayed on the device's screen.

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1                   Do you see that in the first  
2           sentence?

3           A     Yes, I do.

4           Q     Okay. And that would be  
5           information that a user could perceive using  
6           his or her senses.

7                   Correct?

8           A     Yes.

9           Q     Okay. Further down that paragraph,  
10          you state, "A POSITA would have understood  
11          that such information would constitute a  
12          benefit to the user regardless of the user's  
13          subjective opinions."

14                   Do you see that?

15          A     Yes. That's what we've been  
16          discussing.

17          Q     And the information you're  
18          referring to in that second sentence would  
19          include information that appears on the  
20          device's screen.

21                   Correct?

22          A     I wanted to reread all of  
23          paragraph 29. Could you state your question  
24          again?

25          Q     Sure.

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1                   The information you're referring to  
2           and the sentence I read, that begins, "A  
3           POSITA would have understood that such  
4           information, that information would include  
5           information appearing on the device display."

6                   Correct?

7           A     Yes. That's correct.

8           Q     So under your interpretation of the  
9           disputed terms, any information that appears  
10          on a device's display screen will be  
11          perceived as a benefit to the claim's user.

12                  Correct?

13          A     A benefit of the application, yes.  
14          I would consider information displayed on the  
15          device's screen to be noticeable to the user.

16                  So within the -- within the scope  
17          of all the other claim language about the  
18          processor and the application, et cetera,  
19          applying -- I will follow -- that applies as  
20          well.

21                  Simply put, information viewed on  
22          the display screen is noticeable to the user,  
23          and that is a benefit of the application, as  
24          I stated before.

25                  If it weren't, the application

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1 would not have been programmed to waste the  
2 resources to present it.

3 Q In general, do you agree that  
4 applications can have features that benefit  
5 some users but not other users?

6 A Are you asking a question about  
7 terms of degree?

8 Q No, I'm just asking the question  
9 about your general understanding of software  
10 applications and whether or not you agree  
11 with me that applications such as Smartphone  
12 apps can have some features that benefit some  
13 users but not others.

14 MR. DAVIS: Objection to form.

15 A Yeah, that -- that's a  
16 hypothetical. Do you have a specific case?

17 Q I'm just asking whether you can  
18 agree with me that there exists Smartphone  
19 applications or apps that have features that  
20 would benefit some users and not others.

21 A That's outside the scope of the  
22 claim, for one.

23 Do you mean varying degrees of  
24 benefit or zero benefit? I can -- I don't  
25 know that any feature of any app would have

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1 zero benefit to a user.

2 Q Okay. So sitting here today, you  
3 can't think of an example of an application  
4 that would have a feature that would provide  
5 zero benefit to any user?

6 Let me rephrase that, because that  
7 last part was ambiguous.

8 Sitting here today, you cannot  
9 think of an example of an app, a Smartphone  
10 app, that would have a feature that would  
11 provide zero benefit to a user?

12 A Just to make sure I have this  
13 right, go ahead and restate the question.

14 Q Sitting here today, you cannot  
15 think of an example of a Smartphone app that  
16 would have a feature that would provide zero  
17 benefit to a user.

18 Is that correct?

19 A That's a true statement.

20 Q Okay. Let's turn to paragraph -- a  
21 portion of paragraph 29 that you referenced  
22 earlier where you provide certain dictionary  
23 definitions.

24 Are you familiar with that portion  
25 of your declaration?

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1 A Yes.

2 Q You don't include a definition of  
3 the word "benefit" in your declaration.

4 Is that right?

5 A (Witness reviewing.)

6 I think we would need to go through  
7 all of the attachments and extend the  
8 examples. I thought that -- okay.

9 Yeah, at least in my declaration I  
10 note that the Oxford English dictionary  
11 defines benefit as, "For the advantage of or  
12 on behalf of."

13 So can you go back and ask the  
14 question again.

15 Q Sure.

16 And I understand you have a  
17 definition for the phrase, "For the benefit  
18 of." Is that where you were just reading  
19 from?

20 A Yes, I was reciting towards the end  
21 of paragraph 29.

22 Q Yeah. I was asking whether or not  
23 anywhere in your declaration you discuss the  
24 definition of the word "benefit."

25 A (Witness reviewing.)

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1                    Could you ask your question again?

2            Q     Yeah. I'm just asking whether or  
3            not your declaration discusses a definition  
4            of the word "benefit."

5            A     I would need to review all of the  
6            attachments. I searched my declaration for  
7            benefit, and I think that it addresses what  
8            benefit means, including examples from --  
9            well, an excerpt from the '701 patent.  
10          Anyway, I'll stop there.

11                    I believe that the -- I believe  
12            that the declaration sufficiently addresses  
13            what a person of skill would understand a  
14            benefit to be.

15            Q     Let me narrow my question.  
16                    Your declaration doesn't provide  
17            any dictionary definition of the word  
18            "Benefit."

19                    Correct?

20            A     I would disagree with that. I  
21            think that that paragraph 29 defining, "For  
22            the benefit of," even though that's a phrase,  
23            it -- it strongly equates benefit -- the  
24            single word "benefit" with the single word  
25            "advantage."



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1           Q    So do you believe that the plain  
2           meaning of the word "benefit" is advantage?

3           A    I think that's one example of a  
4           benefit, or one example description is that  
5           it's an advantage.

6           Q    Did you review any other  
7           definitions of the word -- dictionary  
8           definitions of the word "benefit" in the  
9           context of your analysis for your  
10          declaration?

11          A    Not that I recall.

12          Q    And are you applying the ordinary  
13          meaning of the word "benefit" when you're  
14          interpreting the disputed terms?

15          A    Yes, I am.

16          Q    What is the ordinary meaning of the  
17          word "benefit"?

18          A    Helpful, advantage. I think those  
19          are applicable.

20          Q    And what is helpful or what is an  
21          advantage is a subjective determination.

22                  Isn't it?

23          A    Not in the scope of these claims.  
24          The benefit is not used in this claim as a  
25          term of degree. It's zero benefit or

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1 non-zero benefit.

2 And a person of skill, as I said  
3 many times, equates that, given that a  
4 processor has to make a determination with  
5 whether the application is performing an  
6 operation that's noticeable to the user.

7 Q Would you agree that where there's  
8 a term used in accordance with its plain  
9 meaning, a court should not recharacterize it  
10 using different language?

11 A I believe that's a statement in  
12 legal principle sections of my declaration  
13 here, but there's no -- there's no  
14 reinterpretation of benefit required, you  
15 know, or performed.

16 Q Do you agree that -- strike that.  
17 Do you agree that what might be  
18 considered an advantage to one person might  
19 not be considered an advantage to another  
20 person?

21 A I think you asked me the exact same  
22 question before but used the word "benefit"  
23 instead of "advantage," so my answer is  
24 already on the record. That's outside the  
25 scope of this claim and these patents.

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1                   How is your line of questioning  
2           going? We will take a break if you've got a  
3           lot longer. Finish the line of questioning  
4           and we'll take a break.

5           Q     Sure.

6                   Let me just ask you, do you agree  
7           under the plain meaning of the word  
8           "benefit," whether something provides a  
9           benefit is a personal opinion?

10           A     That's outside the scope of the  
11           claim language. The claim language turns on  
12           the benefit of the application, and benefit  
13           of the application is not subjective. We've  
14           discussed that many times already.

15           Q     Let me just ask you, in the context  
16           of the plain and ordinary meaning of the word  
17           "benefit" as it would appear in the  
18           dictionary, do you agree that whether  
19           something provides a benefit is based on  
20           personal opinion?

21           A     So you're saying completely outside  
22           of processors and devices and computers and  
23           applications, you're talking about the stock  
24           market or something? Could you give a  
25           specific example?

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1           Q    I'm just talking about the plain  
2           meaning of the word "benefit" as it would be  
3           in a dictionary.

4                   Applying that main meaning of  
5           benefit, do you agree that whether something  
6           provides a benefit is based on personal  
7           opinion?

8           A    Completely outside of the context  
9           of this claim. My answer is maybe yes, maybe  
10          no. Depends on the specific situation.

11          Q    So under just the plain and  
12          ordinary meaning of the word "benefit," there  
13          are instances where one person might perceive  
14          something as a benefit while another person  
15          does not perceive something as a benefit.

16                   Do you agree with that?

17          A    Outside of the context of this  
18          patent and this claim? Maybe yes, maybe no.  
19          We can -- I would want to go through a  
20          specific case study.

21          Q    One last question, and I'll direct  
22          your attention back to claim 2 as it's copied  
23          into your declaration on page 7.

24                   Let me know when you're there.

25          A    Yes.

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1           Q     The claim ends in, "Perceiving any  
2     benefit from that application."

3                     Are you interpreting that to mean  
4     perceiving any benefit of that application?

5           A     Well, I replace "benefit" --  
6     benefit means benefit of that application, so  
7     I interpreted it as benefit of that  
8     application from that application.

9           Q     Is there any difference between the  
10    language "benefit of that application" and  
11    "benefit from that application"?

12          A     I think there's a difference.  
13    There's some overlap, but they're different.

14          Q     What differences can you think of?

15          A     Well, just the -- what the term  
16    means. I would have to -- I'd have to think  
17    about it. I have not considered that  
18    exactly. There's definitely overlap.

19                     From means... benefit of that  
20    application means benefit related to that  
21    application, and from that application means  
22    as a result of.

23                     There's a slight difference.  
24    There's some overlap. I would need more time  
25    to give you a precise answer.

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1           Q    Okay. So there's some overlap in  
2           scope between the terms "benefit from that  
3           application" versus "benefit of that  
4           application," but there's also some  
5           difference in the scope between those two  
6           phrases.

7                     Is that fair?

8           A    There may be some difference in  
9           scope. I said I would want to analyze that  
10          in detail before I gave you a final answer.

11          Q    Okay.

12                     MR. THOMPSON: I think this is a  
13          good time to take a break.

14                     THE VIDEOGRAPHER: We are off the  
15          record.

16                     The time is 9:16 a.m.

17                     (Brief recess taken.)

18                     THE VIDEOGRAPHER: We are back on  
19          the record.

20                     The time is 9:27 a.m.

21          Q    Dr. Chrissan, can I turn your  
22          attention back to claim 2 of the '701 patent  
23          as it appears on page 7 of your declaration?

24          A    Yes.

25          Q    And let's focus on the portion of

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1 the claim that says, "Perceiving any benefit  
2 from that application."

3 Do you see that?

4 A Yes, I see that.

5 Q Okay.

6 A I wanted to clarify something that  
7 we talked about before the break, a benefit  
8 of the application versus from the  
9 application.

10 So as I mentioned in my -- in one  
11 of my answers, a benefit of the app is a  
12 benefit provided by the application or  
13 programmed into the application, whereas the  
14 benefit from that application refers to the  
15 noticeable part of a person of skills  
16 interpretation, and that the app is  
17 performing an application that's noticeable  
18 to the user.

19 Q So that I'm clear, is it still your  
20 testimony that the phrase "benefit from that  
21 application" may have a difference in scope  
22 compared to the phrase "benefit of that  
23 application"?

24 A My answer remains the same. They  
25 are -- there is overlap, but there is some

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1 difference. "Of" and "from" are two  
2 different words.

3 Q Okay. And your interpretation of  
4 the claim -- the claim would replace "benefit  
5 from that application" with "benefit of that  
6 application."

7 Is that still true?

8 A No, that's not correct. I said my  
9 interpretation would replace "benefit from  
10 that application" with "benefit of that  
11 application from that application."

12 So in other words, benefit refers  
13 to a benefit programmed into or provided by  
14 the application. That's how a person of  
15 skill would understand the word "benefit".  
16 That's the only clarification.

17 Q Okay. I think I understand now.

18 Your interpretation, your  
19 interpretation of the claim replaces "benefit  
20 from that application" with "benefit of that  
21 application," from that application.

22 Is that correct?

23 A That's how a person of skill would  
24 interpret the claim, yes.

25 Q Okay. Did you have any



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1       conversations during the break with your  
2       counsel about your response to that question?

3           A     No, I did not.

4           Q     Okay.

5           A     We did not talk at all.

6           Q     That's unfortunate, because Chris  
7       seems like a really nice guy.

8                     Okay. Looking back at claim 2, I  
9       want to focus you on the portion that we were  
10      just discussing, which is perceiving any  
11      benefit from that application. Okay?

12          A     Yes.

13          Q     If I were to remove the portion of  
14      that phrase that says, "Any benefit from,"  
15      such that the claim just read, "Perceiving  
16      that application," how would that affect the  
17      scope of the claim, if at all?

18                     MR. DAVIS: Objection to form.

19          A     I don't have an opinion on that. I  
20      wouldn't be able to give you one on the fly.  
21      I would have to go back and read everything  
22      in detail.

23          Q     Okay. So just sitting here today,  
24      you cannot identify for me any difference in  
25      your interpretation of the claim as written

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1       versus if I remove the term "any benefit  
2       from."

3                   Is that correct?

4           A     That's not what I said. I said I  
5       don't have an opinion one way or the other.  
6       I would need to go off and do a full  
7       analysis.

8           Q     That's why I said, "Sitting here  
9       today."

10                   Without going off and doing a full  
11       analysis, you cannot identify for me any  
12       difference between your interpretation of the  
13       claim as written versus if I remove the  
14       terms, "any benefit from," from the longer  
15       phrase.

16                   Is that correct?

17           A     Intuitively, it seems as though  
18       there would be some difference. I'm not in a  
19       position to analyze it and identify the  
20       answer to your question right now as I sit  
21       here.

22           Q     Just sitting here right now, can  
23       you identify any differences in claim scope  
24       for claim 2 as written versus if I remove the  
25       words "any benefit from"?

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1           A     My answer is the same.

2           Intuitively, it seems as though there should  
3           be a difference, but I would need to analyze  
4           everything in full.

5                     How much time do you want to give  
6           me?

7           Q     I'm just wondering if you were able  
8           to provide any differences, but if you need  
9           to go off and take time to do that, we can  
10          move on.

11                    Let me ask you a different  
12          question.

13          A     Instantaneously, I -- it's  
14          something that I haven't thought about.

15          Q     Okay. What if I replaced the word  
16          "benefit" in the disputed phrase with  
17          "operation"? Does that affect the scope of  
18          the claims under your interpretation?

19          A     That would make the claim  
20          significantly different. I don't have an  
21          opinion on that, either.

22          Q     Okay. Can you identify what a  
23          single difference in the scope of the claim  
24          if I replaced the word "benefit" within the  
25          disputed phrase to the word "operation"?

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1           A     Well, because operation can mean so  
2           many different things with respect to  
3           computers and devices and applications.

4                     Benefit does mean something.   A  
5           benefit of the application is some feature.

6                     I used the word "helpful."  
7           Typically a programmer of an application  
8           considers a benefit a feature from the user's  
9           standpoint.

10                    Operation can mean anything.

11           Q     Can you give me an example of an  
12           instance when if I replace the word "benefit"  
13           with "operation," it would change whether or  
14           not this particular phrase is satisfied?

15           A     Again, I -- I don't have an answer  
16           on the fly. I've learned not to provide, you  
17           know, answers that take hours of  
18           analysis in -- you know, I've learned not  
19           to -- I've learned not to answer questions  
20           that take hours of analysis in five seconds,  
21           because after this deposition I'll think of  
22           something else or some different way I should  
23           have put it or something else that I should  
24           have thought of.

25                    But I explained -- I gave a

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1 reasonably thorough explanation of why I  
2 thought "operation" would change the scope of  
3 the claim or might change the scope of the  
4 claim significantly.

5 Q I'm just wondering whether you can  
6 give me an example, a real life example of an  
7 instance when a user would perceive a benefit  
8 from that application, while a user would not  
9 receive an operation from the application, or  
10 vice versa.

11 A Now, again, the claim scope would  
12 change enough that I wouldn't even try to  
13 come up a with hypothetical or a specific  
14 example on the fly right here.

15 I gave you an overall explanation  
16 that operation is not -- is different than  
17 benefit.

18 Q Yeah, I'm just trying to understand  
19 how it's different under your interpretation,  
20 and I'm asking whether you can give me an  
21 example that illustrates your opinion as to  
22 how it's different.

23 Just saying it's different,  
24 unfortunately, isn't as helpful as if you  
25 could explain an example.

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1           A     I described my interpretation of  
2     benefit. I described my interpretation of  
3     operation as much broader and more general  
4     than benefit, so I think that's sufficient.

5                 Any specific example, I'd have to  
6     go off and analyze it.

7           Q     So then it would be -- if  
8     perceiving an operation, in your opinion, is  
9     more general than perceiving a benefit,  
10    presumably there would be instances where a  
11    user could perceive an operation from an  
12    application but not perceive a benefit from  
13    an application.

14                Is that correct?

15           A     I did not say that perceiving any  
16    operation is more general than perceiving any  
17    benefit.

18                I said it just seems to me as  
19    though -- it doesn't seem. As a person of  
20    skill, I know that the word "operation" has a  
21    much broader interpretation to a person of  
22    skill than the word "benefit". I didn't add  
23    any "perceiving" or any other words of the  
24    claim.

25                That's why I'm saying I would need

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1 to go off and do a full analysis within the  
2 scope of all the other claim language.

3 Q So it's your opinion that operation  
4 is broader than benefit.

5 Correct?

6 A Yes, that's what I stated.  
7 Generally speaking, the word "operation" is  
8 broader than the word "benefit" in the  
9 context of computing devices.

10 Q If I replace the word "benefit" in  
11 a claim with "noticeable operation," does  
12 that change the scope of the disputed term?

13 MR. DAVIS: I will object to form.

14 A I believe in my declaration that I  
15 say -- this is paragraph 27 -- "This  
16 determination considers whether a user is or  
17 is not perceiving a benefit from the  
18 application which a POSITA would understand  
19 to be indicated by whether the device is or  
20 is not performing operations that are  
21 noticeable to the user."

22 So I'd say you're pretty close. I  
23 would -- again, I can't give you a yes or no  
24 without going back and evaluating every word  
25 just to be sure that I don't make a mistake,

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1 but noticeable operation is -- seems to be  
2 pretty close to the opinion I state in 27,  
3 which is the opinion of a person of skill.

4 Q If I were to replace "benefit"  
5 within the disputed terms with "noticeable  
6 operation," sitting here today, you can't  
7 think of any differences that would change  
8 the claim scope according to your  
9 interpretation.

10 Is that fair?

11 MR. DAVIS: Same objection.

12 A Could you ask your question again?

13 Q If I were to replace "benefit"  
14 within the disputed terms with "noticeable  
15 operation," sitting here today, can you think  
16 of any differences -- let me phrase it a  
17 little bit differently.

18 If I were to replace the word  
19 "benefit" within the disputed terms with the  
20 words "noticeable operation," would that  
21 change the scope of the claims, the disputed  
22 claim terms according to your interpretation?

23 MR. DAVIS: Object to form.

24 A I would want to qualify it. I  
25 would not use that language exactly. I would



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1 say "noticeable operation" related to a  
2 feature or benefit.

3 So, again, you're pretty close, but  
4 before I would say exactly, I would want to  
5 do a thorough analysis, because, you know, my  
6 opinion is if the user is going to notice --  
7 if the user is going to perceive, sense, see,  
8 hear, feel if the phone vibrates, if a user  
9 is going to see, hear or feel a benefit, then  
10 the user is going to notice an operation  
11 that's associated with a feature or benefit.

12 So you're pretty close, but I would  
13 want to think about it a little bit before I  
14 said that the claim scope is exact.

15 Q Okay. Sitting here right now  
16 without further analysis, can you identify  
17 for me any differences in the claim scope of  
18 the disputed terms if I replace the word  
19 "benefit" with "noticeable operation"?

20 A I already answered your question.  
21 It's on the record. It's the same that I  
22 said before.

23 Q The answer is no?

24 A The answer is there might be. I  
25 might want to put in a couple of extra words

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1 to clarify that the noticeable operation is  
2 related to a feature.

3 Again, we're getting into territory  
4 that I haven't -- I didn't plot through or  
5 form an opinion on.

6 So, you know, I'm saying, yeah,  
7 you're generally close, but I would need to  
8 go off and do a thorough analysis before I  
9 agreed exactly in terms of how a person of  
10 skill would interpret, you know, all of these  
11 details and changes.

12 Q Let's look back at paragraph 30 of  
13 your declaration.

14 A Yes.

15 Q Okay. And there's an example you  
16 provide in here -- and I'm paraphrasing a  
17 bit, but please feel free to refresh yourself  
18 with the hypothetical. It involves a music  
19 application, for example, Spotify running as  
20 a foreground application and then at some  
21 point the user, they stop directly  
22 interacting with their device and they place  
23 it on the table, and then they're still  
24 perceiving a benefit from the application  
25 because the music is continuing to play.

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1 Do you recall that hypothetical?

2 A Let me read -- the answer to your  
3 question is yes. Let me read paragraph 30.

4 Q Sure.

5 A (Witness reviewing.)

6 Okay. What is your question about  
7 paragraph 30?

8 Q You state towards the end of that  
9 paragraph that, "The application would still  
10 be considered a foreground application and  
11 not in a background state because the user is  
12 perceiving a benefit from the music  
13 application."

14 Do you see that?

15 A Yeah, the user is sensing the  
16 music, hearing the music.

17 Q And is that why your opinion, the  
18 user is still perceiving a benefit from the  
19 application, because the user still is  
20 hearing the music?

21 A Yes, I consider that an operation  
22 that is noticeable to the user.

23 Q Okay. Let's now extend your  
24 hypothetical, and the user has -- is not  
25 interacting with the application. They

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1 placed it on the table and they put in their  
2 ears some really effective earplugs so they  
3 can't hear a thing.

4 Do you understand the hypothetical  
5 so far?

6 A Yes, I do.

7 Q Is that user still perceiving a  
8 benefit from the music application?

9 A I'll refer to 27. Within the scope  
10 of the claim, the answer is yes.

11 And as I say at the end of  
12 paragraph 27, any information from an  
13 application that is noticeable to a user is  
14 expected to be perceived by the user and to  
15 be beneficial to the user, or else the  
16 application would not waste resources  
17 presenting it.

18 Whether the user puts in earplugs  
19 is outside of the scope of the claim and my  
20 analysis.

21 As I mentioned earlier in this  
22 deposition, it's -- the claim states that a  
23 processor is configured to determine. A  
24 person of skill interpreting and implementing  
25 that claim understands that the processor

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1 doesn't — you know, is not required to have  
2 a connection to the user's brain or read the  
3 user's mind or consider whether the user has  
4 put in earplugs in or not.

5 The processor is simply configured  
6 to determine, and then — you know, I won't  
7 recite the rest of the claim, and that's  
8 based on whether the processor and the device  
9 are performing an operation that is  
10 noticeable to a user that's actually  
11 interacting with and paying attention to the  
12 device. That's how a person of skill  
13 interprets the claim.

14 Q Well, you agree that the person  
15 with earplugs in won't notice the music  
16 application playing music.

17 Correct?

18 A Under your hypothesis, that person  
19 wouldn't hear the music. They still may be  
20 aware of it.

21 Q How did the processor know whether  
22 the user is noticing the music application or  
23 not?

24 A Well, that gets back to my previous  
25 answer. That's outside of the scope of the

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1 claim.

2 The processor is not required to  
3 know if the user has put in earplugs. The  
4 processor is not required to know if the, you  
5 know, the processor is not required to read  
6 the user's mind or have a wire into the  
7 user's brain.

8 A person of skill understands that  
9 that's not within the scope of the claim.

10 Q Let's just continue in my  
11 hypothetical, that the user who put in the  
12 earphones, they're not aware of the music  
13 playing anymore. They can't hear it.  
14 They're not aware that it's playing.

15 In that instance, is the music  
16 application performing a noticeable  
17 operation?

18 A Yes.

19 Q How so?

20 A If the music application is still  
21 playing music, it's noticeable to a user that  
22 is -- that is there or presumed to be there  
23 and interacting formally with the phone.

24 Q Okay. So if the application is  
25 playing music, has a really good battery life

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1 and the user flies across the country from  
2 the United States to China, is the user still  
3 perceiving the benefit from that application?

4 A That is far outside the scope of  
5 the claim. At that point they're so far  
6 disconnected that the user may not be  
7 perceiving in terms of -- to the extent  
8 perceiving means see, hear, feel, be aware  
9 of, at that point the user may not be  
10 perceiving the phone because there's --  
11 because at that point they're so far  
12 disconnected and it's so far outside the  
13 claim, but the processor is still doing  
14 something noticeable to any user that happens  
15 to be interacting with it, or, you know,  
16 operating with it as you and I would normally  
17 use and work with and operate our device.

18 Q So if the person left their phone  
19 on the table and traveled to China where they  
20 can no longer see or hear their phone, would  
21 they satisfy the requirement of perceiving a  
22 benefit from the application?

23 A At that point they're not even a  
24 user of the device. It's just -- that's --  
25 yeah, at that point they're not even a user

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1 of the device. It's so far fetched that the  
2 claim interpretation has been completely  
3 distorted.

4 Q What if the user put the phone  
5 down, just took the dog for a walk in the  
6 front yard and they can't see or hear the  
7 device anymore? Are they still perceiving a  
8 benefit from the application?

9 A My answer is the same. The back  
10 yard or the next door neighbor or China, at  
11 some point they don't even qualify as a user  
12 of the device, even if they happen to be the  
13 owner of it.

14 You know, the -- as I mention in  
15 claim 27, a person of skill interprets this  
16 as meaning that the user of the device is, in  
17 fact, able to see, feel, hear the device.

18 Q How is a -- let's take a deaf  
19 person. A deaf user of the phone can't hear  
20 the music application.

21 Correct?

22 A Okay. Under your hypothetical, we  
23 can -- we can take that as a given in your  
24 hypothetical.

25 Q Would a deaf person be perceiving



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1 any benefit from the music application if  
2 they set it down on the table and walked  
3 away?

4 A I can't answer that as I sit here.  
5 I only know that the person presumably  
6 wouldn't be able to hear it.

7 Again, that's outside of the scope  
8 of how a person of skill interprets this  
9 claim.

10 Q What do you mean when you say that?

11 A Well, I say -- I refer to my -- at  
12 the end of my paragraph 27. In a deaf  
13 person, it's certainly a corner case.

14 My -- my declaration at the end of  
15 paragraph 27 says, "Any information from an  
16 application that is noticeable to a user is  
17 expected to be perceived by the user, wherein  
18 perceived means sensed, see, feel, optically  
19 recognized -- I'm sorry -- see, here,  
20 optically recognized, et cetera, by the user  
21 and to be beneficial to the user, or else the  
22 application would not waste resources  
23 presenting it."

24 Your example of a deaf person  
25 breaks that presumption, but this is the

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1       presumption that a person of skill has when  
2       programming and operating -- or when  
3       programming the device.

4               I can say that because by the time  
5       this patent rolled around, I had been making  
6       electronic devices for 20 years.

7               Q     Right. So then would -- at the  
8       point in time when a deaf person is not  
9       interacting with the music app and they place  
10      the phone on the table and they walk away ten  
11      feet, is the deaf person perceiving any  
12      benefit from the application?

13              A     To me, at least with respect to  
14      hearing, that's the same hypothetical as the  
15      back yard, the next door neighbor or China.  
16      Possibly not.

17              Q     So in that context, would the  
18      application be in a background state?

19              A     Well, again, that's a completely  
20      separate question, because your hypothetical  
21      does not apply to the claim.

22              Q     How does my hypothetical not apply  
23      to the claim?

24              A     A person of skill presumes that any  
25      information from an application that is

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1       noticeable to a user is expected to be  
2       perceived by the user and to be beneficial to  
3       the user, or else the application would not  
4       waste resources presenting it.

5               This is a variation. All your  
6       questions are somewhat variations on the same  
7       theme, so my answers will be essentially the  
8       same answer.

9               You know, the China, deaf -- I  
10      forget what the other one was -- but it all  
11      boils down to the fact that if the -- let me  
12      get back to the language of claim 2. "The  
13      processor has to make a determination," and  
14      if the -- if a device -- if an application is  
15      playing music out the speaker of a device,  
16      according to this claim the processor is not  
17      going to consider that running in a  
18      background state.

19              Along the same theme that I said  
20      before, a person of skill interpreting and  
21      implementing this claim understands that the  
22      processor is not required to read the user's  
23      mind, have a direct connection to the user's  
24      brain, understand if the user is deaf, that's  
25      outside of the scope of the claim.

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1                   That's why I said your hypothetical  
2                   is outside the scope of the claim.

3                   Q     Okay. So in the -- returning to  
4                   the example of the person leaving their phone  
5                   on the table and taking a plane to China, and  
6                   the application, the music application is  
7                   still playing the music, is that an instance  
8                   when the application will still be in a  
9                   foreground state even though the user is not  
10                  directly acting with the application and is  
11                  not receiving a benefit from that  
12                  application?

13                  A     And my answer is the same as  
14                  before. At that point the person doesn't  
15                  even qualify as a user of the device. It's a  
16                  completely different claim interpretation.

17                  Q     How close do you have to be to the  
18                  phone to qualify as a user of the device?

19                  A     As I said in my paragraph 27, any  
20                  information from an application that is  
21                  noticeable to the user is expected to be  
22                  perceived by the user and to be beneficial to  
23                  the user, or else the application would not  
24                  waste resources presenting it.

25                        So close enough to see and be able

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1 to see the screen for a noticeable operation  
2 that's visual related, close enough and able  
3 to hear for a operation that is noticeable by  
4 hearing -- yeah, close enough and able to  
5 hear for an operation that is related to  
6 hearing, et cetera.

7 The claim -- there's no requirement  
8 to the claim of how close. It's just able to  
9 see, hear, feel, be aware of the operation  
10 that is noticeable to the user.

11 Q Under your interpretation of the  
12 disputed claims, the term "user" has a  
13 requirement of a person that can perceive the  
14 device.

15 Is that correct?

16 Let me strike that. That's not the  
17 question that I wanted to ask.

18 Under your interpretation of the  
19 disputed claims, the term "user" has a  
20 requirement of being a person that  
21 concurrently perceives the device.

22 Is that correct?

23 A The claim term is user of the  
24 device. I do not opine in this declaration  
25 on exactly what qualifies as a user of the

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1 device.

2 Again, in order to do that, if you  
3 wanted me to, it would take -- it would take  
4 longer than you want to give me right now.

5 But at a high level, the user of  
6 the device does have plain and ordinary  
7 meaning as the person that uses the device,  
8 not a person who happens to own the device  
9 but doesn't take it with him or her to China.

10 Q Does a user cease to be -- does a  
11 person -- strike that. I will start again.

12 Does a person cease to be a user of  
13 the device as that term is used in the  
14 disputed claims if the person walks outside  
15 their house?

16 A As I stated before, I'm not  
17 prepared to get into exact, you know,  
18 thorough analysis of when a user -- what does  
19 or does not qualify as a user of the device.

20 But generally, yes, a person far  
21 enough from the device that they have no  
22 connection to it, a person of skill would  
23 understand that that is not a user of the  
24 device.

25 Q How far does a person have to go to

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1 have no connection to their device and no  
2 longer be a user of the device under the  
3 terms of the claims?

4 A I already answered that question.  
5 If you can, just take my last answer. I'm  
6 not prepared to give an exact definition.

7 But, you know, plain and ordinary  
8 meaning to a person of skill or even to a  
9 commoner or a general layperson, it generally  
10 understands that if you're too far from your  
11 phone to have any connection to it of any --  
12 I don't want to get into specific words --  
13 but anyone would recognize, including a  
14 person of skill, that there is at some point,  
15 you know, a lack of association or connection  
16 or distance you can have with your phone such  
17 that you would not be considered a user of it  
18 under the -- under the scope of this claim.

19 Q Let's talk for a second about a  
20 hypothetical alarm application, Smartphone  
21 alarm application.

22 Are you familiar with such  
23 applications?

24 A I am somewhat familiar with those.

25 Q Okay. Let's say there's an alarm

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1 application that that's sole purpose it to  
2 use heavy metal music to wake up the device  
3 user at 3:00 a.m. in the morning, and within  
4 the app there's terribly limited features.  
5 You can't change the type of music or the  
6 wake-up time.

7 Does that make sense so far?

8 A You mean an alarm on your phone.  
9 Right?

10 Q Yes.

11 A I was thinking of a home alarm  
12 system when you said, "Alarm."

13 That's why the difference is --  
14 that's an example of how differences in, you  
15 know, the way people think of things can be  
16 so different.

17 So it's important not -- for me not  
18 to give answers on the fly and to go -- to  
19 hypotheticals, but go ahead and ask your  
20 hypothetical and I'll do my best.

21 But we're talking about an app on  
22 your phone, and you can't control the time  
23 and you can't control the music.

24 Q Correct. 3:00 a.m., wake up every  
25 day to heavy metal.



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1 Are you with me so far?

2 A Okay.

3 Q Now we're going to consider my  
4 grandmother who hates heavy metal music more  
5 than any other type of music. She really  
6 hates waking up before 6:00 a.m.

7 Still with me?

8 A I'm with you.

9 Q All right. And would you agree  
10 with me that if this application is running  
11 and wakes up my grandmother at 3:00 a.m.,  
12 that will be something that is noticeable to  
13 her.

14 Correct?

15 A Yes, that would be noticeable to  
16 her.

17 Q And under your claim  
18 interpretation, if I install this app on my  
19 grandmom's phone and it wakes her up at  
20 3:00 a.m. every day with heavy metal music,  
21 and she's a device user, would she perceive a  
22 benefit from that application?

23 A I would have a number of additional  
24 questions about your hypothetical that I --  
25 I'm not sure I would even come up with all of

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1       them right now.

2               But either way, I still resort to  
3       my opinion in my paragraph 27. Any  
4       information from an application that is  
5       noticeable to a user is expected to be  
6       perceived by the user and to be beneficial to  
7       the user or else the application would not  
8       waste resources presenting it.

9               It goes back to the same theme that  
10       I've said before. The claim does not require  
11       the processor to read the user's mind, if  
12       your grandmother could even be a considered a  
13       user of the device at that point, but that's  
14       beside the point.

15              Again, I have a number of  
16       questions. The main thing, you know, I  
17       repeat my same opinion: The processor is not  
18       required to read your grandmom's mind.

19              The processor is simply operating  
20       with the understanding that any information  
21       from an application that is noticeable to a  
22       user is expected to be perceived by the user  
23       and be beneficial to the user or else the  
24       application would not waste resources  
25       presenting it.

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1           Q     Okay. Well, I want to just step  
2     away from the discussion of the processor  
3     real fast.

4                 I want to just look at the claim  
5     language that concerns a user of the device  
6     is not directly interacting with that  
7     application or perceiving any benefit from  
8     that application. Okay.

9                 So in the context of the  
10    hypothetical I asked you, and let's take the  
11    assumption that my grandmother would be  
12    considered a user of the phone. It's right  
13    next to her on the bedside table.

14                Under your interpretation, if my  
15    grandmother's phone is running the app that  
16    wakes her up at 3:00 a.m. every morning with  
17    heavy metal music, both of which she hates,  
18    is she a user of the device perceiving a  
19    benefit from that application?

20           A     The hypothetical is so far out  
21    there that I can't answer yes or no. I mean,  
22    you've dictated so many of the terms.

23           Q     What more information do you need?

24           A     So you said... so you said first  
25    off -- well, hold on. Let me think about it.

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1 I have too many questions.

2 Q What is the first one?

3 A So why -- so first off, you're  
4 dictating that your grandmother is a user of  
5 the device. You said that was a condition.

6 Right?

7 Q Let's just assume that.

8 A Again, we're -- we are -- this  
9 hypothetical is so far outside of the scope  
10 of the claim, but if your grandmother is not  
11 perceiving a benefit, why is she allowing  
12 this to happen?

13 Q She doesn't know how to turn it  
14 off. She can't change the feature. It's  
15 been three days in a row. She can't figure  
16 out the settings, not very good with  
17 technology, any of those things.

18 Why she's not turning it off  
19 doesn't seem to matter here. I'm just giving  
20 you the facts of the scenario.

21 A So -- so basically what -- you have  
22 dictated a hypothetical -- let me make sure I  
23 get this right.

24 You have dictated a hypothetical  
25 where your grandmother is the user of the

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1 device, and you have essentially dictated the  
2 hypothetical that your grandmother is not  
3 perceiving a benefit.

4 Would you agree with that?

5 Q If that is -- I agree with you that  
6 that is true.

7 A No, no, no, no, no. You have  
8 basically dictated a situation -- you have  
9 dictated a situation that is -- that makes  
10 no -- that doesn't make sense to me.

11 You have dictated the conditions  
12 that your grandmother is the user of the  
13 device, and she is not receiving any benefit  
14 from it because you said she doesn't know how  
15 to turn it off.

16 She doesn't know how to leave her  
17 phone in the basement. She doesn't know how  
18 to call you up yelling at you, "Why did you  
19 put this thing on my device?"

20 You basically dictated a  
21 hypothetical that's outside the scope of the  
22 claim.

23 So if you want to dictate that  
24 hypothetical, give me your hypothetical  
25 again. I will do my best to give you some

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1 sort of an answer to your hypothetical that's  
2 outside of the scope of the claim.

3 Q Okay. My hypothetical is, again,  
4 grandmother hates heavy metal music. She  
5 hates getting up before 6:00 a.m.

6 As a user of a Smartphone that has  
7 an app that only does one thing, which is  
8 wake people up at 3:00 a.m. with heavy metal  
9 music, within the language of the claim would  
10 my grandmother be a user of the device that  
11 is perceiving a benefit from that  
12 application?

13 A I can't answer you -- I can't  
14 answer that yes or no, honestly, honestly  
15 because of how constrained and outlandish  
16 your hypothetical is.

17 I can only tell you that any  
18 information from an application that is  
19 noticeable to a user is expected to be  
20 perceived by the user and to be beneficial to  
21 the user, or else the application would not  
22 waste resources presenting it, i.e., making  
23 it noticeable.

24 Q Do you agree with my hypothetical  
25 that my grandmother would not be perceiving

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1 any benefit from that application?

2 A I can't even say that unless you  
3 dictate to me that that is the truth of the  
4 hypothetical.

5 Q My grandmother hates the  
6 application. Does that mean that she's --  
7 would you agree that means she's not  
8 perceiving any benefit from the application?

9 A Again, I can't read your  
10 grandmother's mind, just like the processor  
11 is not reading your grandmother's mind.

12 If you want to make it a condition  
13 of your hypothetical that she is not  
14 perceiving any benefit, which is what I think  
15 you're trying to do, go ahead and state that.

16 Q Okay. My grandmother than hates  
17 this app so much, and I asked her, I said,  
18 "Grandma, are you receiving any benefit From  
19 this application?"

20 And she said, "None whatsoever. I  
21 can't stand the thing."

22 Now, is the application running in  
23 the background state?

24 MR. DAVIS: Object to form.

25 A So the processor, given that it is

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1 under -- under the condition of this claim,  
2 and notwithstanding the fact it's not  
3 required to understand your grandmother or  
4 her tastes, if the processor is performing an  
5 operation that is noticeable to a user, then  
6 it is -- it would determine that the  
7 application is something other than running  
8 in a background state.

9 Q Would you agree within the context  
10 of these disputed claims, there will be  
11 instances when a user is perceiving no  
12 benefit from an application -- strike that.

13 Let me take you to paragraph 32 of  
14 your declaration.

15 A Go ahead and finish your line of  
16 questioning, but we'll start thinking about  
17 the next break once it's done.

18 You said paragraph 32?

19 Q Yes.

20 A All right. Let me read it.

21 (Witness reviewing.)

22 Okay. I've read paragraph 32.

23 Q Okay. You state in paragraph 32  
24 that if objective boundaries were required,  
25 the specification provides several.



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1 Do you see that?

2 A Yes.

3 Q And you cite and reproduce a few  
4 paragraphs from the '701 patent  
5 specification.

6 Is that correct?

7 A Yes.

8 Q And in paragraph 33, you say these  
9 examples from the specification provide  
10 objective boundaries as to the scope of the  
11 challenged claim term.

12 Do you see that?

13 A Yes.

14 Q Okay. So is it your opinion that  
15 the examples provided within the excerpts of  
16 the specification reproduced in your  
17 declaration provide objective boundaries for  
18 the disputed claim terms?

19 A Yes, that is what this declaration  
20 states, and I agree.

21 These are examples -- there are  
22 examples in here that would be noticeable to  
23 a user, and there are examples that may be  
24 related to operations that are not noticeable  
25 to a user at a given instant.

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1           Q    Is it your understanding that these  
2           examples in the specification would be  
3           sufficient for a person of ordinary skill in  
4           the art to understand the scope of the  
5           disputed claim terms?

6           A    Yes, it is.

7           Q    Do you agree that the specification  
8           doesn't provide any specific rules or  
9           definite standard to help or to inform a  
10          person of ordinary skill in the art as to  
11          when the disputed claim language is  
12          satisfied?

13          A    Could you give me that question  
14          again?

15          Q    Sure.

16                So we just talked about examples  
17          from the specification that relate to the  
18          disputed claim terms.

19                I'm asking you whether you agree  
20          the specification doesn't provide a specific  
21          rule or a defined standard to inform a person  
22          of ordinary skill in the art as to the scope  
23          of the disputed claim terms.

24          A    I think the spec is sufficient to  
25          inform a person of skill as to the disputed

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1 claim terms. That's what we've been  
2 discussing.

3 Q I'm not talking to the use of  
4 examples. I'm talking about through a  
5 defined rule or stated standard as to when a  
6 user would perceive a benefit from an  
7 application versus when they would not.

8 Do you understand what I'm -- the  
9 distinction I'm making there?

10 A Not 100 percent.

11 Again, the specification,  
12 especially the claim language can inform a  
13 person of skill regarding the scope of the  
14 claim.

15 Q I have just a few more questions  
16 before we take a break.

17 Paragraph 11 of your declaration,  
18 it states that you have reviewed relevant  
19 portions of the patent specifications and  
20 claims, and it goes on beyond that.

21 Do you see that?

22 A Yes.

23 Q Did you review the entire patent  
24 specification for the asserted patents?

25 A They were long. I did read them

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1       all. I read one, every word, and then  
2       read -- and then just looked for any  
3       differences with the other patents.

4           Q     Okay.

5           MR. THOMPSON: Why don't we take a  
6       break now.

7           THE VIDEOGRAPHER: We are off the  
8       record.

9           The time is 10:32 a.m.

10          (Brief recess taken.)

11          THE VIDEOGRAPHER: We are back on  
12       the record.

13          The time is 10:46 a.m.

14          Q     The disputed claim terms, they  
15       appear deep in the claims of the  
16       corresponding patents.

17               Is that correct?

18          A     Yes, I believe they do in each  
19       instance.

20          Q     And is it fair to assume you  
21       reviewed the corresponding independent claims  
22       for which those claims depend?

23          A     Yes, I did review them.

24          Q     And did you understand the scope of  
25       the independent claims that corresponded to

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1 the -- deep in the claims that contain the  
2 disputed terms?

3 A Yes.

4 Q Was there any portion of any of the  
5 corresponding independent claims that you  
6 didn't understand?

7 A No, I understood them and I  
8 understood their scope.

9 Since we're talking about them,  
10 I'll go back and reread claim 1 of the '701.

11 Q That's not necessary right now. I  
12 won't prevent you if you need to do that in  
13 response to one of the questions, but let me  
14 just stay on track for a moment.

15 I want to direct your attention to  
16 paragraph 32 of your declaration and  
17 specifically to a portion of paragraph 32  
18 that is on page 11, your own page 11 looking  
19 at paragraph 32.

20 A (Witness reviewing.)

21 Okay. I'm at paragraph 32. It  
22 starts on page 10?

23 Q Correct. I'm over on page 11, if  
24 you want to turn to the next page.

25 There's a sentence that reads --

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1       it's about a third of the way through the  
2       full paragraph that appears on page 11. It  
3       states, "As the specification explains and as  
4       the claims recite, applications can be given  
5       access to network resources when they are  
6       benefiting the user but denied access when  
7       they are not in order to conserve resources."

8               Do you see that sentence?

9               A     (Witness reviewing.)

10              I see that sentence.

11             Q     And when you're referring to the  
12       claims recite, do you agree that the concepts  
13       of getting access to network resources and  
14       denying access to conserve resources, those  
15       are aspects of the limitations of the  
16       independent claims?

17             A     (Witness reviewing.)

18              Those could be aspects. Let me  
19       read the independent claim.

20              (Witness reviewing.)

21              Yeah, the independent claim says,  
22       "Selectively block and allow access," so  
23       that's related to a policy.

24             Q     So let's take a look at independent  
25       claim 1 of the '701 that appears in your

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1 declaration.

2 You actually bolded a portion of  
3 claim 1 of the '701 patent on page 6 of your  
4 declaration, and that bolded portion reads,  
5 "Application capable of running in a  
6 background state and capable of running as a  
7 foreground application."

8 Do you see that?

9 A Yes, I do.

10 Q And in the context of the patents,  
11 what is a foreground application?

12 MR. DAVIS: Objection to form.

13 A I would need to review the whole  
14 patent spec before I gave you a conclusive  
15 answer on that.

16 Q You understood the scope of  
17 claim 1, the '701 patent, when you reviewed  
18 it.

19 Correct?

20 A Yes, I did.

21 Q Okay. I'm just asking you to tell  
22 me then, what is your understanding of the  
23 term "foreground application"?

24 A Well, I can -- a person of skill  
25 reading claim 1 and seeing "foreground

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1 application" knows that foreground  
2 application generally refers to something  
3 higher priority than background.

4 Generally refers to interacting  
5 with the user, but for a detailed answer, a  
6 detailed answer may be dependent on any  
7 number of details in the specification.

8 Q There can be foreground  
9 applications that are positioned at lower  
10 priority than background applications.

11 Correct?

12 A Again, that -- I'm not in a  
13 position right now to get into the details of  
14 any given platform or system or how to  
15 program them. I don't offer opinions on the  
16 inner workings of specific computing  
17 platforms.

18 Q In the context of claim 1 of the  
19 '701 patent, how can I tell whether an  
20 application is capable of running as a  
21 foreground application?

22 A I believe that those are well-known  
23 terms of art, and a person of skill -- again,  
24 I'll give you two answers.

25 One, I would want to read the



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1 patent specification completely to review  
2 where it used each of those terms, because  
3 that might shape my answer somewhat.

4 But I will also say that background  
5 stated foreground applications are well-known  
6 terms of art in programming, such that a  
7 person of skill would, you know, be able to  
8 apply those terms to the platform that he or  
9 she is working on in a well-known way.

10 Q Well, then, do you believe that the  
11 terms "background state" and "foreground  
12 application" are used in the disputed patents  
13 in accordance with their ordinary meaning?

14 A I don't have an opinion on that as  
15 we sit here right now. My understanding  
16 is -- I've not been told they were offered as  
17 disputed claim terms, and under my knowledge  
18 of patent law, that means that a person of  
19 skill is supposed to give them their plain  
20 and ordinary meaning in light of intrinsic  
21 and extrinsic evidence.

22 Q You gave the terms "background  
23 state" and "foreground application" their  
24 ordinary meanings as part of performing your  
25 analysis in your declaration.

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1                   Is that fair?

2           A     Yes, that's a fair statement for  
3     claim 1.

4                   For claim 2, it narrows -- you  
5     know, narrows claim 1's --

6           Q     Okay. Again, you understand the  
7     scope of claim 1 in the '701 patent.

8                   Correct?

9           A     Yes, I do. I've read it several  
10    times prior to this deposition today and did  
11    not have any issues or concerns about my  
12    understanding of it.

13                   That said, I want to read claim 1  
14    right now.

15                   (Witness reviewing.)

16           Q     For the record, are you rereading  
17    claim 1 of the '701 patent?

18           A     Yes, I am. Page 6 of my  
19    declaration.

20                   (Witness reviewing.)

21                   Okay.

22           Q     Having reread claim 1 of the '701  
23    patent, can you now tell me what is the  
24    ordinary meaning of foreground application  
25    that you adopted as part of your analysis of

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1       these claims?

2           A     I give you the same answer. A  
3       person of skill -- number 1, I would want to  
4       review the entire patent again.

5           But number 2, a person of skill  
6       would apply the terms background state and  
7       foreground application to his or her  
8       particular computing platform when  
9       implementing this claim.

10          Q     Okay.

11          A     I don't have any answer beyond what  
12       I answered before.

13           The foreground application is  
14       generally considered higher priority, and the  
15       portions that -- you know, are user facing  
16       versus the background state being lower  
17       priority and things that are not user facing.

18          Q     Are there any other characteristics  
19       that you would generally ascribe to compare  
20       foreground applications to those running in  
21       the background state besides higher priority  
22       and user facing?

23          A     Even those are -- no. The answer  
24       so your question is no.

25           And even those examples are not

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1       conclusive. They're just off the top of my  
2       head as a person of skill in response to your  
3       answer -- in response to your question.

4               I would still want to go back and  
5       read the whole patent because, you know, the  
6       legal -- the legal interpretation is the  
7       plain and ordinary meaning in light of the  
8       intrinsic and extrinsic evidence.

9               Q     If we look later in claim 1, which  
10       spills over to page 7 of your declaration,  
11       the claim recites, "Selectively block and  
12       allow access by the first end user  
13       application to the WAN modem."

14               Do you see that?

15               A     Yes.

16               Q     So when your declaration was  
17       referring to the concept of denied access, is  
18       this an example of the type of denied access  
19       you were referring to?

20               A     (Witness reviewing.)

21               I am --

22               (Witness reviewing.)

23               I am looking at paragraph 32 in my  
24       declaration. I did a search, and that's the  
25       only place I came up with the word "denied."

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1                   As a specification -- you're  
2           referring to -- by paragraph -- by sentence  
3           in my declaration at paragraph 32 that says,  
4           "As the specification explains and as the  
5           claim recite, applications can be given  
6           access to network resources when they are  
7           benefiting the user but denied access when  
8           they are not in order to conserve resources."

9                   That's the "denied" you were  
10          referring to in your question.

11                   Correct?

12                 Q     Correct. You state in that  
13          sentence that we just read -- I think we read  
14          it a few minutes ago -- as the claims recite,  
15          I'm just wondering if this is one of the  
16          claims that you're referring to.

17                 A     Yeah, I think "selectively block"  
18          would have been better wording than "denied,"  
19          because the claim says, "Selectively  
20          blocked."

21                   So you can -- we'll just -- my  
22          opinion is to replace that "denied" with  
23          "selectively blocked," "denied" with  
24          "selectively blocked," and then, yes, that  
25          would be an example of the claim language.

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1           Q     What does the claim mean when it  
2           says, "Selectively block and allow access by  
3           the first end user application to the WAN  
4           modem"?

5           A     To me that means -- please recite  
6           your question again.

7           Q     What does the claim mean where it  
8           says, "Selectively block and allow access by  
9           the first end user application to the WAN  
10          modem"?

11          A     Well, it means exactly what it  
12          states. Selectively block and allow access  
13          by the first end user application to the wide  
14          area network modem, but I think the most  
15          typical explanation of that is throttle the  
16          cellular data connection, or have a policy --  
17          sorry.

18                 Where it says, "Selectively block  
19          and allow access," I think the most typical  
20          example of that is to have a policy that  
21          allows you to throttle the cellular data  
22          connection.

23          Q     And according to claim 1, what are  
24          the circumstances under which an application  
25          would not be able to communicate with the WAN

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1 modem?

2 A (Witness reviewing.)

3 Could you ask your question again?

4 Q Sure.

5 I'm just wondering in the context  
6 of claim 1, what are the specific  
7 circumstances under which an application  
8 would not be able to communicate with the WAN  
9 modem?

10 MR. DAVIS: Object to form.

11 A (Witness reviewing.)

12 Okay. I read the whole claim  
13 again. Give me your question one more time.

14 Q Sure.

15 I was asking in the context of  
16 claim 1, what are the specific circumstances  
17 under which an application would not be able  
18 to communicate with the WAN modem?

19 A My answer is the last element of  
20 the claim, wherein the access is selectively  
21 blocked based on a determination that the  
22 first end user application is running in a  
23 background state, and wherein the access is  
24 selectively allowed based on a determination  
25 that the first end user application is

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1 running as a foreground application.

2 Q So just to try and simplify that to  
3 some extent, for claim 1 of the '701 patent,  
4 if, for example, the specific application is  
5 determined to be in a background state,  
6 that's an example of when the application  
7 would not be able to communicate with the WAN  
8 modem according to the claims.

9 Is that fair?

10 A I think that's correct.

11 Q Conversely -- well, strike that.

12 This claim concerns blocking access  
13 to the WWAN modem, not the WLAN modem.  
14 Correct?

15 A Let me review.

16 (Witness reviewing.)

17 Yes, this is about the wide area  
18 network, not about the wireless local area  
19 network.

20 Q And you understand there to be any  
21 benefit provided by this claim and similar  
22 claims across the disputed patents that block  
23 access to the WWAN network and WLAN NETWORK?

24 A Please reread the whole question.

25 Q Sure.



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1                   What benefit is there, if any, of  
2           blocking access to the WLAN modem as opposed  
3           to the WWAN modem?

4                   MR. DAVIS: Object to form.

5                   A     Are you asking that as -- from my  
6           general understanding of a -- as a POSITA in  
7           the intrinsic art?

8                   Q     Yeah, and anything that you have  
9           gleaned from your review of the materials you  
10          analyzed for purposes of your declaration.

11                  A     I mean, we can -- I would want to  
12          go back to the patent and read my declaration  
13          to give you a detailed answer, but I think at  
14          a high level, a person of skill and the  
15          patent acknowledged that resources tend to be  
16          more limited and more expensive over a wide  
17          area network than they are over a local area  
18          network.

19                  Q     Is that because, for example, wide  
20          area networks often have associated costs?

21                  A     I think at the time of the patent,  
22          and even today in some networks, the answer  
23          to your question is yes.

24                  Q     Are you familiar with the concept  
25          of a metered network?

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1           A     I think so.

2           Q     What is your understanding of a --  
3     what's referred to as a metered network?

4           A     Could you provide some more  
5     narrowing of your example? I consider my  
6     electrical grid a metered network.

7           Q     In the context of cellular  
8     communications or Smartphones, what is your  
9     understanding of the concept of a metered  
10    network?

11          A     I can think of a number of things  
12    that might apply. That's not a term that's  
13    used a lot in communications that I know of,  
14    at least in the areas that I'm familiar with.  
15    You're welcome to read my CV.

16                So that said, can we -- let's pull  
17    up the patent. I want to review the patent  
18    to see if it describes metered network.

19                Do you want to drop the '701 to me  
20    or allow me to pull it up?

21          Q     I will represent to you the patent  
22    doesn't use the word "metered."

23          A     Okay. So then purely extrinsically  
24    from the point of a -- from the point of a  
25    person of skill, I would guess that a metered

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1 network with respect to digital communication  
2 data is a network where you -- the cost of  
3 using some service is based, at least in part  
4 somehow, on the amount of data that you send  
5 over that communication network.

6 Q Yeah, fair enough.

7 Are you aware of any instances  
8 where WLAN networks might be metered?

9 A Yes, I think within -- within the  
10 scope of this patent, the one very obvious  
11 example of a wireless wide area network is a  
12 cellular network.

13 I know at least in some  
14 circumstances, on some networks data usage is  
15 metered.

16 Q I think I was asking in the context  
17 of a WLAN network, not a WWAN network.

18 Are you aware of instances when a  
19 WLAN network might be metered?

20 A Not as I sit here now.

21 Even back in the days where you  
22 paid for WiFi, I think you just paid a  
23 one-time fee. They didn't bother to actually  
24 track the traffic. It's too hard.

25 But WiFi is not the only wireless

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1 local area network, either, but it's the most  
2 prevalent to us, that's for sure.

3 Q If I were to modify the device  
4 recited in claim 1 of the '701 patent such  
5 that instead of determining whether the  
6 connection was a WLAN modem or a WWAN modem,  
7 it determined whether the connection was  
8 metered or non-metered, would my alternative  
9 accomplish all the same goals of the  
10 invention of the '701 patent?

11 MR. DAVIS: Object to form.

12 A That's too big of a hypothetical  
13 jump. I would need to analyze a particular  
14 scenario or situation.

15 I wasn't -- I don't believe I have  
16 opined on benefits other than, you know, at a  
17 high level that we discussed here.

18 THE VIDEOGRAPHER: We are off the  
19 record.

20 The time is 11:17 a.m.

21 (Whereupon a discussion was held  
22 off the record.)

23 THE VIDEOGRAPHER: We are back on  
24 the record.

25 The time is 11:18 a.m.

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1           A    I did think of one clarification to  
2           your last question.

3                   Even if -- even if metered is not  
4           the only distinguishing factor, because  
5           capacity, capacity alone can be independent  
6           of metered or not.

7           Q    Can you further explain your  
8           additional testimony?

9           A    Yeah, it's no -- I think it's  
10          fairly well known that the capacity -- the  
11          data capacity of the cellular system in  
12          general is lower than the data capacity of  
13          your wireless land network unless your house  
14          has a very low-budget internet service  
15          provider.

16                   I think Comcast is giving the 800  
17          megabits per second to my house. I don't  
18          think my cellphone is doing it -- actually,  
19          my phone -- no, actually -- I'll digress.

20                   We actually -- we had a problem  
21          with our cable, so we actually literally ran  
22          a speed test on the phone through the cable  
23          and through the cellular network, and the  
24          cable was, I think 6 or 700 megabits per  
25          second on an iPhone 10, and the cellular

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1 network was pretty fast, pretty good and  
2 respectable, but well under a hundred.

3 Q Yeah, that sounds about right.

4 A Okay. So back to your questions.

5 Q Yeah.

6 Fair to say that the claims, at  
7 least we're talking about in the disputed  
8 patents, make the distinction to selectively  
9 block and allow traffic based on a WWAN  
10 versus WLAN distinction, not based on whether  
11 a connection is metered or not? Can we agree  
12 on that?

13 A Generally, yes.

14 We've already discussed the  
15 claim -- the claim discusses a WLAN. It  
16 discusses and recites WWAN. It only talks  
17 about what happens with the WWAN, and it  
18 talks about the existence of a WLAN. So to  
19 the extent that matches your question, yes, I  
20 agree.

21 Q My initial point was that the  
22 claims are -- the claims of the disputed  
23 patents are agnostic as to whether or not  
24 either connection is metered or not metered.

25 Is that fair?

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1           A     That is correct. The claims -- the  
2     claim language in and of itself does not  
3     discuss whether a network is metered or not.

4           MR. THOMPSON: I want to drop an  
5     exhibit into the chat. Bear with me one  
6     minute.

7           This will be Exhibit 2.

8           (Whereupon the above mentioned was  
9     marked for identification.)

10          A     There we go. It just came in.

11          MR. THOMPSON: I will state for the  
12     record that this is Exhibit 2, which  
13     bears the Bates number HW, underscore,  
14     00004783, and is U.S. patent number  
15     9,143,976.

16          Q     After you've had a chance to take a  
17     look at that exhibit, Dr. Chrissan, you can  
18     tell me whether you recognize Exhibit 2?

19          A     (Witness reviewing.)

20                 I see that Exhibit 2. The file  
21     that was transferred is the '976 patent.

22          Q     And if we can turn to the back  
23     where claim 2 appears, my question will be:  
24     Does claim 2 of this patent include the  
25     disputed term?

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1           A     (Witness reviewing.)

2                     Claim 2 of the '976 includes one of  
3     the disputed terms.

4           Q     Did you review claim 1 as part of  
5     forming your analysis in this case, claim 1  
6     of the '976 patent?

7           A     Yes, I did. I read the pending  
8     claim with the disputed language and its  
9     independent claims that it depends upon for  
10    all of the disputed claims.

11          Q     I want to take a look at claim 1.  
12    I will direct your attention to column 105,  
13    and there's a portion of the claim that  
14    appears at the bottom of that call. It  
15    starts with the word "Classified."

16                     Do you see that?

17          A     Yes.

18          Q     And towards the end portion of that  
19    limitation there's a clause that reads,  
20    "Whether or not the first end user  
21    application when running is interacting in  
22    the device display foreground with the user."

23                     Do you see that?

24          A     Yes, I see that.

25          Q     What does the portion of that



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1 phrase that says, "Interacting in a device  
2 display foreground with the user require"?

3 A Let me read the whole --

4 MR. DAVIS: Object to form.

5 A Let me read the whole claim.

6 (Witness reviewing.)

7 Okay. I have read the claim. What  
8 is your question?

9 Q What is the portion of the claim  
10 that says, "Interacting in a device display"  
11 -- all right. Strike that.

12 What does the portion of the phrase  
13 that says, "Interacting in a device display  
14 foreground with a user require"?

15 MR. DAVIS: Object to form.

16 A No -- interacting, the plain and  
17 ordinary meaning of interacting is some kind  
18 of two-way transfer.

19 So interacting, in my opinion,  
20 requires, you know, some kind of input from a  
21 user in some way, shape or form under some  
22 context that a person of skill would apply in  
23 his or her particular development and  
24 programming scenario.

25 Other than that, I think the phrase

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1 defines itself.

2 Q We previously looked at claim 1 of  
3 the '701 patent. That's the claim that  
4 appeared in your declaration, and it had a  
5 phrase of, "Running in the foreground."

6 Do you recall that? Feel free to  
7 reference -- sorry to cut you off.

8 A It says -- yeah, claim 1 says,  
9 "Running as a foreground application."

10 Q Correct.

11 Is there a distinction between,  
12 "Running as a foreground application," and  
13 the phrase, "Interacting in the device  
14 display foreground with the user"?

15 MR. DAVIS: Object to form.

16 A As I sit here now, I think there  
17 are distinctions between those two.

18 Q Why do you say that?

19 A As -- your two terms were "running  
20 in the foreground" -- wait. "Running as a  
21 foreground application," versus, "Interacting  
22 in the device display foreground with the  
23 user," yes, those do not sound like the same  
24 claim element to me.

25 Q Okay. Can you tell me any

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1 differences?

2 A (Witness reviewing.)

3 The '976 patent uses the term  
4 "interacting." I think the differences are  
5 in the literal wording.

6 Running -- "Running as a foreground  
7 application," is different than, "Interacting  
8 in the device display foreground with the  
9 user." They're different terms.

10 Maybe there could be some overlap.  
11 I would have to analyze a particular scenario  
12 and do analysis on a particular platform that  
13 this is being applied to, but I can say  
14 definitely in general they're not the same  
15 thing.

16 Q Let me ask you this question:

17 If a device determines that an  
18 application is running as a foreground  
19 application, does that necessarily mean that  
20 the application is interacting in the device  
21 display foreground with the user?

22 MR. DAVIS: Object to form.

23 A Please state your question again.

24 Q Sure.

25 I'm just trying to get an

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1 understanding of the distinction you're  
2 drawing. I'm just trying to figure out  
3 whether one of these terms is broader than  
4 the other or what their relationship is to  
5 provide some context.

6 My question is, if a device  
7 determines that an application is running as  
8 a foreground application, does that  
9 necessarily mean that the application is also  
10 interacting in the device display foreground  
11 with the user?

12 A No.

13 Q Why not?

14 A Because running -- your question  
15 was running as a foreground application.

16 Right?

17 Q Correct.

18 A Yeah, running -- if you draw a Venn  
19 diagram between running as a foreground  
20 application and interacting in the device  
21 display foreground with the user, that Venn  
22 diagram probably has -- again, I would  
23 need -- this is not a definitive answer. The  
24 Venn diagram would have non-zero area in all  
25 four states.

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1                   But I do know that running in a  
2           foreground application is broader than --  
3           broader in general -- not necessarily wholly  
4           inclusive, but generally broader than  
5           interacting in the device display foreground  
6           with the user, because the -- you know, the  
7           wording in the second case is more specific.  
8           You have the word "interacting" and you have  
9           the word "device display foreground" with the  
10          user.

11                   MR. THOMPSON: Let me provide you  
12          with another exhibit.

13                   This will be Exhibit 3.

14                   (Whereupon the above mentioned was  
15          marked for identification.)

16                   MR. THOMPSON: And for the record,  
17          Exhibit 3 bears the Bates number HW,  
18          underscore, 00005741 and is U.S. patent  
19          number 9277433.

20                   Q     Doctor --

21                   A     I have it.

22                   Q     Dr. Chrissan, the first question  
23          will be, do you recognize Exhibit 3?

24                   A     Yes.

25                   Q     And is Exhibit 3 one of the patents

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1       you reviewed during the process of forming  
2       the opinions in your declaration?

3             A     I believe so. Let me check.

4                   (Witness reviewing.)

5             Yes.

6             Q     And would you have reviewed claim 1  
7       of the '433 patent as part of your analysis  
8       in forming the opinions in your declaration?

9             A     (Witness reviewing.)

10            Yes, I reviewed claims 1 and 2 as  
11   well as 3 of the '433.

12            Q     Okay. I want to focus your  
13   attention on the first portion of claim 1  
14   that relates to the wide area network modem.

15                   Do you see that?

16            A     Yes.

17            Q     And towards the end of that  
18   limitation, it says, "The WWAN," W-W-A-N,  
19   "having a corresponding network type of a  
20   plurality of wireless network types."

21                   Do you see that?

22            A     Yes.

23            Q     What is your understanding of the  
24   phrase or term "network type" in the context  
25   of this claim?

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1 MR. DAVIS: Object to form.

2 A (Witness reviewing.)

3 My answer is similar to the terms  
4 that you pointed out in the previous patent.  
5 I would want to search the patent first.

6 Okay. The first sentence of the  
7 abstract talks about multiple wireless  
8 network types. I -- let me...

9 (Witness reviewing.)

10 Okay. This is what I had in my  
11 head while I was searching.

12 So this -- the specification  
13 corroborates my answer. At column 95,  
14 line 9, the patent says, "The wireless  
15 networks 2404 can be identifiable by network  
16 type, e.g., 2G, 3G, WiFi," et cetera. So  
17 that's what I was thinking.

18 My answer, if the patent hadn't  
19 mentioned network type at all and I had to go  
20 off plain and ordinary meaning, I would have  
21 said, well, the network type just means  
22 different kinds of networks, but the best  
23 example that a person of skill would have is  
24 2G versus 3G versus 4G versus 5G cellular  
25 networks.

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1 I suppose Y max is a possibility,  
2 too, but that never took off.

3 Q Right. In the context of network  
4 types corresponding to a WWAN, that would  
5 include 2G, 3G, 4G, 5G and sometime down the  
6 road probably 6G.

7 Is that fair?

8 A Those would be examples that fall  
9 within the scope of the claim. I agree.

10 Q Further down in claim 1 there's a  
11 limitation that begins, "When the one or more  
12 internet activity access controls."

13 Do you see that?

14 A At line 65?

15 Q Let me just confirm that. I'm  
16 looking at the same place.

17 A It is. I'm going to read the whole  
18 claim anyway.

19 Q Okay. That's correct.

20 So let me ask you the question.

21 Then I'll give you some time to read.

22 That particular limitation uses the  
23 phrase "aggregate network activity." My  
24 question to you will be, what does aggregate  
25 network activity mean in that context?



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1 A (Witness reviewing.)

2 Okay. Let me read the claim and  
3 search the patent, but I will read the claim  
4 first.

5 (Witness reviewing.)

6 MR. DAVIS: Can I also ask that we  
7 take a break shortly?

8 MR. THOMPSON: Sure. I'll get to  
9 that after the question is answered.

10 A (Witness reviewing.)

11 I'm almost there.

12 Q Okay.

13 A (Witness reviewing.)

14 I'm writing down a column and line  
15 number.

16 (Witness reviewing.)

17 Okay. My -- my understanding as a  
18 person of ordinary skill is that this -- and  
19 then I took that and went back through the  
20 patent to corroborate instances where it uses  
21 the word "aggregated." Aggregate would mean  
22 combine and control a shared resource.

23 If you look -- I think that's how a  
24 person of skill would generally interpret  
25 aggregate, some kind of sharing, multiplexing

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1 and control of the sharing and the  
2 multiplexing.

3 And if you look at column 11 and  
4 36...

5 (Witness reviewing.)

6 Wait. Where is it?

7 (Witness reviewing.)

8 MR. DAVIS: I see a column 11 at  
9 36. The term "aggregated" is used.

10 A It says, "Aggregated or otherwise  
11 controlled."

12 So I think aggravated -- aggregated  
13 to a person of skill, the meaning is combined  
14 and control of shared resource.

15 Q Can you help me to understand that  
16 in the context of the claims of the '433  
17 patent where it talks about aggregating  
18 network activity?

19 A Yeah. It says, "Aggregate network  
20 activity for the first internet access  
21 request with network activity for one or more  
22 other data communication requests which are  
23 not otherwise associated with the end user  
24 application."

25 So I'll pause and say, you know, I

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1        don't have -- I have not formulated my -- any  
2        final given opinion on this. I would need to  
3        read the patent in its entirety to give you a  
4        final interpretation.

5                But, you know, I represent myself  
6        as a person of skill and you're asking me  
7        these questions, so I'll do my best to  
8        interpret some high-level stuff on the fly,  
9        but any -- any final assessment would be in  
10       an infringement report specific to a given  
11       system.

12               But now I go back to my answer. It  
13       looks like what's being shared and controlled  
14       is a first internet access request along with  
15       other internet access requests and, you know,  
16       the sharing and controlling looks like it  
17       involves giving everybody else access before  
18       the first internet access request.

19               That's my high-level assessment as  
20       I sit here right now on the fly. Any more  
21       detail, you would have to give me the time to  
22       go off and assess it in detail.

23               And it may apply -- it also may --  
24       any given infringement read, which I have  
25       none right now, would depend on the specific

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1 system to which the claim is being read.

2 Q I understand.

3 MR. DAVIS: Are we able to take  
4 that break?

5 A Yes. Do you have any other  
6 questions in this line, or do you want to  
7 give the gentleman his break?

8 MR. THOMPSON: Sorry. That took  
9 longer than I expected.

10 I'll just caveat it with I think I  
11 have a couple more questions on an  
12 exhibit, which I can probably knock out  
13 in five minutes, but if you would like  
14 to take a break first we can do that as  
15 well.

16 THE WITNESS: Let's go ahead and  
17 take the break. It sounds like whoever  
18 requested it wanted it.

19 MR. THOMPSON: Sorry.

20 THE WITNESS: We can keep it short,  
21 say back at noon.

22 THE VIDEOGRAPHER: Let's take us  
23 off the record.

24 We are off the record.

25 The time is 11:54 a.m.

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1 (Brief recess taken.)

2 THE VIDEOGRAPHER: We are back on  
3 the record.

4 The time is 12:04 p.m.

5 Q Dr. Chrissan, we were just looking  
6 at an excerpt from the '433 patent, and you  
7 directed my attention to column 11 around  
8 line 36.

9 Do you recall that?

10 A Yes.

11 Q I want to ask you a related  
12 question about a portion of the same call on  
13 the -- that begins around line 49.

14 Can you let me know when you're  
15 there?

16 A Yes.

17 Q The sentence says, "For example,  
18 some applications and/or OS functions have  
19 limited capabilities to defer certain traffic  
20 types."

21 Do you see that?

22 A Yes.

23 Q What does the word "defer" mean  
24 there in the context of these patents?

25 MR. DAVIS: Object to form.

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1           A     Let me search the patent for  
2     "defer." I'll also give you plain and  
3     ordinary meaning.

4                     (Witness reviewing.)

5           The specification uses the word  
6     "defer" in context.

7           For example, in column 74, it  
8     basically means delay some period of time or  
9     wait for some condition.

10          Q     We talked before in the context of  
11     the '701 patent about selectively blocking  
12     access.

13                     Is there a distinction between  
14     blocking access and deferring in the context  
15     of these patents, according to your  
16     understanding of a person of ordinary skill  
17     in the art?

18          A     Let's go back to the '701 patent.  
19     I'll just read the claim from my declaration.

20                     (Witness reviewing.)

21           Okay. Could you read me your  
22     question again?

23          Q     Sure.

24                     I referenced our earlier  
25     conversation about the '701 patent and the

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1 selectively blocking access, and I was asking  
2 your understanding of whether there's a  
3 distinction between blocking access and  
4 deferring in the context of these patents  
5 according to your understanding of an  
6 ordinary person of skill in the art.

7 A The answer to your question is yes,  
8 there is a difference.

9 The claim term is "selectively  
10 block and allow access," so that implies a  
11 policy that could block and allow access on  
12 any time granularity, whereas defer means, as  
13 I said, wait or delay -- delay or wait for  
14 conditions.

15 So there is some overlap. A policy  
16 that selectively blocks could do so -- a  
17 policy that selectively blocks and allows  
18 access could do so such that the end result  
19 is a deferral.

20 Q I see.

21 MR. THOMPSON: I just dropped into  
22 the chat, which should be Exhibit 4.

23 (Whereupon the above mentioned was  
24 marked for identification.)

25 A Okay.

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1 MR. THOMPSON: And Exhibit 4 bears  
2 the Bates number HW, underscore,  
3 00002011 and is U.S. patent number  
4 9,277,445.

5 Q And my first question once you have  
6 a chance to access that, Dr. Chrissan, is do  
7 you recognize Exhibit 4?

8 A (Witness reviewing.)

9 Yes, the '445 is one of the patents  
10 I opine on.

11 Q And as part of coming up with your  
12 analysis for your declaration, did you review  
13 claim 1 of the '445 patent?

14 A Yes, I did.

15 Q You understood that claim?

16 A Yes. Like the other claims you've  
17 asked about, when I read it and analyzed it  
18 and compared it against the others,  
19 everything made sense.

20 Q I want to direct your attention to  
21 a portion of claim 1 that appears in  
22 column 106 that starts with, "Apply a  
23 differential traffic control policy."

24 Do you see that?

25 A Yes, I see it.



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1           Q     And it later references a first and  
2           second classification.

3                     Do you see that?

4           A     (Witness reviewing.)

5                     Yes, the next element says the  
6           first and second classifications.

7           Q     And a little further down in  
8           claim 1 there's a limitation that starts,  
9           "Block the internet service access request in  
10          a first state of the first and second  
11          classifications."

12                    Do you see that?

13          A     Yes, I see that element.

14          Q     And what's your understanding of  
15          what that element means?

16          A     Let me read the claim from the top.  
17                   (Witness reviewing.)

18                   MR. DAVIS: And I will object to  
19          form.

20          A     (Witness reviewing.)

21                    There are a number of logical  
22          conditions in this claim, but I can't explain  
23          any of the words better than they appear on  
24          the face.

25                    Your question was what does the

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1 block -- block the internet service request  
2 element mean?

3 Q Let me -- let me, given your  
4 response just now, let me ask maybe a simpler  
5 question.

6 Is it your understanding that when  
7 a certain -- certain conditions are satisfied  
8 that are laid out in the claim, an  
9 application would be prevented from  
10 requesting internet service access?

11 MR. DAVIS: Object to form.

12 A (Witness reviewing.)

13 That's not how I'm interpreting it.  
14 Can you read your question again?

15 Q Sure. Let me try and rephrase it a  
16 little bit.

17 Is it your understanding that there  
18 are at least a first and second  
19 classification, and whenever a particular  
20 state of the first and second classifications  
21 exist, an application is prevented from  
22 requesting internet service access?

23 MR. DAVIS: Same objection.

24 A (Witness reviewing.)

25 Okay. Please read the question one

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1 more time.

2 Q Yeah, sure.

3 Is it your understanding that there  
4 are at least a first and a second  
5 classification recited in claim 1 of the '445  
6 patent, and whenever a particular state of  
7 the first and second classification exists,  
8 an application would be prevented from  
9 requesting internet service access?

10 MR. DAVIS: Object to form.

11 A I'm not seeing that in the claims.

12 Q Okay.

13 MR. THOMPSON: I don't have any  
14 further questions.

15 MR. DAVIS: All right. I have just  
16 a few questions for Dr. Chrissan.

17 EXAMINATION BY MR. DAVIS:  
18

19 Q You recall talking through a number  
20 of hypotheticals earlier.

21 Right?

22 A Yes.

23 Q Now, if a person uses a music  
24 application like Spotify on their mobile  
25 device to play music for a party that's going

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1 on at their house, and then that person walks  
2 outside the house knowing that the music is  
3 still playing, could they still be considered  
4 a user of the mobile device?

5 In other words, if they're aware  
6 that the music is still playing, could they  
7 still be considered a user of the mobile  
8 device?

9 A Please ask your question one more  
10 time.

11 Q Sure.

12 If a person -- and if you need me  
13 to break it up, I'm happy to do that, too,  
14 but I'll take it from the top.

15 If a person uses a music  
16 application like Spotify on their mobile  
17 device to play music for a party that's going  
18 on at their house, and then the person walks  
19 outside the house but is aware that the music  
20 is still playing, could they still be  
21 considered a user of the mobile device?

22 A We discussed -- we discussed a  
23 number of scenarios, but if the -- if a user  
24 is -- if a user sees, feels, hears, or is  
25 aware of a -- an operation that is noticeable

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1 to the user, then I would say yes, that  
2 person could be considered a user of the  
3 device.

4 We had -- you know, we had various  
5 discussions about -- that, you know, the  
6 ultimate decision of a user would be context  
7 and situation dependent on the hypothetical.

8 Q If the person walks outside their  
9 house, aware that the music is still playing  
10 for the party, can the phone still be  
11 producing sound that can be perceived by  
12 someone?

13 A Can you please state your  
14 hypothetical again?

15 Q Sure. Maybe I can simplify.

16 If a person starts playing music on  
17 their phone and then steps away from their  
18 phone, can the phone still be producing sound  
19 that can be perceived by someone?

20 A Yes. That's a normal use case.

21 Q Dr. Chrissan, you were asked about  
22 a number of terms appearing in claim 1 of  
23 certain asserted patents.

24 Do you recall that?

25 A Yes, and -- yes, I do.

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1           Q    Were you asked to opine about -- in  
2           creating your declaration, were you asked to  
3           opine about any claim construction disputes  
4           with respect to language that appears only in  
5           claim 1 of any asserted patent?

6           A    No. I was not asked to opine on  
7           language that appears only in independent  
8           claims.

9           Q    All right.

10           MR. DAVIS: No further questions.

11           MR. THOMPSON: Just one follow-up  
12           question.

13           EXAMINATION BY MR. THOMPSON:  
14

15           Q    Dr. Chrissan, would you agree that  
16           a device processor like the processor recited  
17           in the claims of the disputed patents doesn't  
18           know necessarily what a person necessarily  
19           sees, feels or hears?

20           MR. DAVIS: Object to form.

21           A    In a general sense, that is true.  
22           That's why I said many times in this  
23           deposition the scope of the claims does not  
24           require a processor to read the user's mind.

25           MR. THOMPSON: No further

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1 questions.

2 MR. DAVIS: All right. No further  
3 questions.

4 THE VIDEOGRAPHER: We are off the  
5 record.

6 The time is 12:26 p.m.

7 THE COURT REPORTER: Mr. Davis, you  
8 want the same delivery as Mr. Thompson,  
9 correct? Rough draft, seven-day final  
10 plus rough?

11 MR. DAVIS: Yes, thank you.

12 (Witness was excused.)

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1 C E R T I F I C A T E

2 I, MICHAEL FRIEDMAN, a Certified Court  
3 Reporter and Notary Public, qualified in and for  
4 the State of New Jersey do hereby certify that  
5 prior to the commencement of the examination DR.  
6 DOUGLAS CHRISSAN was duly sworn by me to testify to  
7 the truth the whole truth and nothing but the  
8 truth.

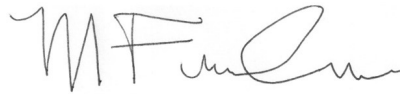
9 I DO FURTHER CERTIFY that the foregoing  
10 is a true and accurate transcript of the testimony  
11 as taken stenographically by and before me at the  
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a  
14 relative of nor employee nor attorney nor counsel  
15 for any of the parties to this action, and that I  
16 am neither a relative nor employee of such attorney  
17 or counsel, and that I am not financially  
18 interested in the action.

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DEPOSITION ERRATA SHEET

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of  
my Deposition taken in the captioned matter  
or the same has been read to me, and  
the same is true and accurate, save and  
except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION  
ERRATA SHEET hereof, with the understanding  
that I offer these changes as if still under  
oath.

Signed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
DR. DOUGLAS CHRISSAN

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